

# STATE OF NEW YORK

8838

## IN ASSEMBLY

January 13, 2022

Introduced by M. of A. GOTTFRIED -- 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; to amend the state finance law, in relation to establishing the pharmacy benefit manager regulatory fund; and to amend a chapter of the laws of 2021 amending the public health law relating to pharmacy benefit managers; amending the insurance law relating to registration and licensing of pharmacy benefit managers; and repealing certain provisions of the public health law relating thereto, as proposed in legislative bills numbers S.3762 and A.1396, in relation to the effectiveness thereof

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

1 Section 1. Subdivisions 1, 2, 3 and 5 of section 280-a of the public  
2 health law, as added by a chapter of the laws of 2021 amending the  
3 public health law relating to pharmacy benefit managers; amending the  
4 insurance law relating to registration and licensing of pharmacy benefit  
5 managers; and repealing certain provisions of the public health law  
6 relating thereto, as proposed in legislative bills numbers S. 3762 and  
7 A. 1396, are amended to read as follows:

8 1. Definitions. As used in this section, the following terms shall  
9 have the following meanings:

10 (a) "Health plan [~~or provider~~]" means an entity for which a pharmacy  
11 benefit manager provides pharmacy benefit management [~~including, but not~~  
12 ~~limited to: (i)~~] services and that is a health benefit plan or other  
13 entity that approves, provides, arranges for, or pays or reimburses in  
14 whole or in part for health care items or services, [~~under which~~] to  
15 include at least prescription drugs, for a substantial number of benefi-  
16 ciaries [~~of the entity are purchased or which provides or arranges~~  
17 ~~reimbursement in whole or in part for the purchase of prescription~~  
18 ~~drugs; or (ii) a health care provider or professional that acquires~~  
19 ~~prescription drugs to use or dispense in providing health care to~~  
20 ~~patients where the prescription drug is the subject of the pharmacy~~

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

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~~benefit manager's pharmacy benefit management services~~ who work or reside in this state. The superintendent shall determine, in his or her sole discretion, by regulation how the phrase "a substantial number of beneficiaries who work or reside in this state" shall be interpreted.

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

(i) mail service pharmacy;

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

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

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

(v) patient compliance, therapeutic intervention, or generic substitution programs;

(vi) disease management;

(vii) drug utilization review or prior authorization;

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

(ix) contracting with network pharmacies; and

(x) controlling the cost of covered prescription drugs.

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

(d) "Maximum allowable cost price" means a maximum reimbursement amount set by the pharmacy benefit manager for therapeutically equivalent multiple source generic drugs.

(e) "Controlling person" means 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.

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

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

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

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

2. Duty, accountability and transparency. (a) (i) The pharmacy benefit manager shall have a duty and obligation to ~~the covered individual and the health plan or provider, and shall~~ perform pharmacy benefit management services with care, skill, prudence, diligence, and professionalism~~, and for the best interests of the covered individual, and the health plan or provider. Where there is a conflict in the pharmacy benefit manager's duty or obligation under this paragraph to the covered individual and any other party, the duty or obligation to the covered individual shall be primary~~.

1 (ii) In addition to the duties as may be prescribed by regulation  
2 pursuant to article twenty-nine of the insurance law:

3 (1) A pharmacy benefit manager interacting with a covered individual  
4 shall have the same duty to a covered individual as the health plan for  
5 whom it is performing pharmacy benefit management services.

6 (2) A pharmacy benefit manager shall have a duty of good faith and  
7 fair dealing with all parties, including but not limited to covered  
8 individuals and pharmacies, with whom it interacts in the performance of  
9 pharmacy benefit management services.

10 (b) All funds received by the pharmacy benefit manager in relation to  
11 providing pharmacy benefit management services shall be received by the  
12 pharmacy benefit manager in trust [~~for the health plan or provider~~] and  
13 shall be used or distributed only pursuant to the pharmacy benefit  
14 manager's contract with the health plan [~~or provider~~] or applicable law;  
15 including any administrative fee or payment to the pharmacy benefit  
16 manager expressly provided for in the contract to compensate the pharma-  
17 cy benefit manager for its services. Any funds received by the pharmacy  
18 benefit manager through spread pricing shall be subject to this para-  
19 graph. In addition to any other power conferred by law the superinten-  
20 dent shall have the authority to prescribe rules concerning pharmacy  
21 benefit manager administrative fees, including limitations on their form  
22 and use.

23 (c) The pharmacy benefit manager shall account, annually or more  
24 frequently to the health plan [~~or provider~~] for any pricing discounts,  
25 rebates of any kind, inflationary payments, credits, clawbacks, fees,  
26 grants, chargebacks, reimbursements, or other benefits received by the  
27 pharmacy benefit manager. [~~The pharmacy benefit manager shall ensure~~  
28 ~~that any portion of such income, payments, and financial benefits is~~  
29 ~~passed through to the health plan or provider in full to reduce the~~  
30 ~~reportable ingredient cost.~~] The health plan [~~or provider~~] shall have  
31 access to all financial and utilization information of the pharmacy  
32 benefit manager in relation to pharmacy benefit management services  
33 provided to the health plan [~~or provider~~].

34 (d) The pharmacy benefit manager shall disclose in writing to the  
35 health plan [~~or provider~~] the terms and conditions of any contract or  
36 arrangement between the pharmacy benefit manager and any party relating  
37 to pharmacy benefit management services provided to the health plan [~~or~~  
38 ~~provider~~] including but not limited to, dispensing fees paid to the  
39 pharmacies.

40 (e) The pharmacy benefit manager shall disclose in writing to the  
41 health plan [~~or provider~~] any activity, policy, practice, contract or  
42 arrangement of the pharmacy benefit manager that directly or indirectly  
43 presents any conflict of interest with the pharmacy benefit manager's  
44 relationship with or obligation to the health plan [~~or provider~~].

45 (f) Any information required to be disclosed by a pharmacy benefit  
46 manager to a health plan [~~or provider~~] under this section that is  
47 reasonably designated by the pharmacy benefit manager as proprietary or  
48 trade secret information shall be kept confidential by the health plan  
49 [~~or provider~~], except as required or permitted by law, including disclo-  
50 sure necessary to prosecute or defend any legitimate legal claim or  
51 cause of action. Designation of information as proprietary or trade  
52 secret information under this subdivision shall have no effect on the  
53 obligations of any pharmacy benefit manager or health plan to provide  
54 that information to the department of health or the department of finan-  
55 cial services.

56 (g) The superintendent, in consultation with the commissioner[+]

1 ~~(i)~~] may make regulations defining, limiting, and relating to the  
2 duties, obligations, requirements and other provisions relating to phar-  
3 macy benefit managers under this subdivision~~], and~~

4 ~~(ii) shall establish, by regulation, minimum standards for pharmacy~~  
5 ~~benefit management services which shall address the elimination of,~~  
6 ~~conflicts of interest between pharmacy benefit managers and covered~~  
7 ~~individuals, health benefit plans and health care providers, spread~~  
8 ~~pricing, and deceptive practices, anti-competitive practices, and unfair~~  
9 ~~claims practices.~~

10 ~~(h) A health care provider and a covered individual shall be deemed to~~  
11 ~~be third party beneficiaries of the duties, obligations and requirements~~  
12 ~~applicable to the pharmacy benefit manager under this section and shall~~  
13 ~~be entitled to legal or equitable relief for any injury or loss to the~~  
14 ~~health care provider or the covered individual caused by any violation~~  
15 ~~of such duties, obligations or requirements].~~

16 3. Prescriptions. A pharmacy benefit manager may not substitute or  
17 cause the substituting of one prescription drug for another in dispens-  
18 ing a prescription, or alter or cause the altering of the terms of a  
19 prescription, except with the approval of the prescriber or as explicit-  
20 ly required or permitted by law, including regulations of the department  
21 of financial services or the department of health. The superintendent  
22 and commissioner, in coordination with each other, are authorized to  
23 promulgate regulations to determine when substitution of prescription  
24 drugs may be required or permitted.

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 (i) the cost of the prescription medication to the individual, or
- 34 (ii) 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; or

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. Article 29 of the insurance law, as added by a chapter of the  
47 laws of 2021 amending the public health law relating to pharmacy benefit  
48 managers; amending the insurance law relating to registration and  
49 licensing of pharmacy benefit managers; and repealing certain provisions  
50 of the public health law relating thereto, as proposed in legislative  
51 bills numbers S. 3762 and A. 1396, is amended to read as follows:

52 ARTICLE 29

53 PHARMACY BENEFIT MANAGERS

- 54 Section 2901. Definitions.
- 55 2902. Acting without a registration.
- 56 2903. Registration requirements for pharmacy benefit managers.

- 1 2904. Reporting requirements for pharmacy benefit managers.  
2 2905. Acting without a license.  
3 2906. Licensing of a pharmacy benefit manager.  
4 2907. Revocation or suspension of a registration or license of a  
5 pharmacy benefit manager.  
6 2908. Penalties for violations.  
7 2909. Stay or suspension of superintendent's determination.  
8 2910. Revoked registrations or licenses.  
9 2911. Additional obligations.  
10 2912. Change of address.  
11 [~~2912.~~] 2913. Applicability of other laws.  
12 [~~2913.~~] 2914. Assessments.

13 § 2901. Definitions. For purposes of this article:

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

17 (b) The terms "covered individual", "health plan [~~or-provider~~]",  
18 "pharmacy benefit manager" and "pharmacy benefit management services"  
19 have the same meanings as defined by section two hundred eighty-a of the  
20 public health law. The superintendent is expressly authorized to inter-  
21 pret these terms as if the definitions were stated within this article.

22 § 2902. Acting without a registration. (a) No person, firm, associ-  
23 ation, corporation or other entity may act as a pharmacy benefit manager  
24 on or after [~~April~~] June first, two thousand [~~twenty-one~~] twenty-two and  
25 prior to January first, two thousand [~~twenty-three~~] twenty-four, without  
26 having a valid registration as a pharmacy benefit manager filed with the  
27 superintendent in accordance with this article and any regulations  
28 promulgated thereunder.

29 (b) Any person, firm, association, corporation or other entity that  
30 violates this section shall, in addition to any other penalty provided  
31 by law, be liable for restitution and compensatory damages to any health  
32 plan [~~or-provider~~], pharmacy or covered individual, or other person  
33 harmed by the violation and shall also be subject to a penalty not  
34 exceeding of the greater of (1) [~~one~~] four thousand dollars for the  
35 first violation and [~~two~~] ten thousand [~~five hundred~~] dollars for each  
36 subsequent violation or (2) the aggregate economic gross receipts  
37 attributable to all violations.

38 § 2903. Registration requirements for pharmacy benefit managers. (a)  
39 Every pharmacy benefit manager that performs pharmacy benefit management  
40 services on or after [~~April~~] June first, two thousand [~~twenty-one~~] twen-  
41 ty-two and prior to January first, two thousand [~~twenty-three~~] twenty-  
42 four shall register with the superintendent in a manner acceptable to  
43 the superintendent, and shall pay a fee of [~~one~~] four thousand dollars  
44 for each year or fraction of a year in which the registration shall be  
45 valid. The superintendent, in consultation with the commissioner of  
46 health, may establish, by regulation, minimum registration standards  
47 required for a pharmacy benefit manager. The superintendent can reject a  
48 registration application filed by a pharmacy benefit manager that fails  
49 to comply with the minimum registration standards.

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

54 (c) Every registration will expire on December thirty-first, two thou-  
55 sand [~~twenty-two~~] twenty-three regardless of when registration was first  
56 made.

1 (d) Every pharmacy benefit manager that performs pharmacy benefit  
2 management services at any time prior to [~~April~~] June first, two thou-  
3 sand [~~twenty-one~~] twenty-two, shall make the registration and fee  
4 payment required by subsection (a) of this section on or before June  
5 first, two thousand [~~twenty-one~~] twenty-two. Any other pharmacy benefit  
6 manager shall make the registration and fee payment required by  
7 subsection (a) of this section prior to performing pharmacy benefit  
8 management services.

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

15 § 2904. Reporting requirements for pharmacy benefit managers. (a)(1)  
16 On or before July first of each year, [~~beginning in two thousand twen-~~  
17 ~~ty-one,~~] every pharmacy benefit manager shall report to the superinten-  
18 dent, in a statement subscribed and affirmed as true under penalties of  
19 perjury, the information requested by the superintendent including,  
20 without limitation,

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

25 (ii) the terms and conditions of any contract or arrangement, includ-  
26 ing other financial or other reimbursements incentives, inducements or  
27 refunds between the pharmacy benefit manager and any other party relat-  
28 ing to pharmacy benefit management services provided to a health plan  
29 [~~or provider~~] including but not limited to, dispensing fees paid to  
30 pharmacies.

31 (2) The superintendent may require the filing of quarterly or other  
32 statements, which shall be in such form and shall contain such matters  
33 as the superintendent shall prescribe.

34 [~~(2)~~] (3) The superintendent may address to any pharmacy benefit  
35 manager or its officers any inquiry in relation to its provision of  
36 pharmacy benefit management services or any matter connected therewith.  
37 Every pharmacy benefit manager or person so addressed shall reply in  
38 writing to such inquiry promptly and truthfully, and such reply shall  
39 be, if required by the superintendent, subscribed by such individual, or  
40 by such officer or officers of the pharmacy benefit manager, as the  
41 superintendent shall designate, and affirmed by them as true under the  
42 penalties of perjury.

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

53 (c) All information, documents and material disclosed by a pharmacy  
54 benefit manager under this section and in the possession or under  
55 control of the superintendent shall be deemed confidential and not  
56 subject to [~~public~~] disclosure except [~~(1) by court order when relevant~~]

1 ~~and material in a civil or criminal action or proceeding, or (2)~~ where  
2 and as the superintendent determines that disclosure is in the public  
3 interest. This subsection shall not apply to information, documents and  
4 materials where they are in the possession and under the control of a  
5 person or entity other than the superintendent.

6 § 2905. Acting without a license. (a) No person, firm, association,  
7 corporation or other entity may act as a pharmacy benefit manager on or  
8 after January first, two thousand [~~twenty-three~~] twenty-four without  
9 having authority to do so by virtue of a license issued in force pursu-  
10 ant to the provisions of this article.

11 (b) Any person, firm, association, corporation or other entity that  
12 violates this section shall, in addition to any other penalty provided  
13 by law, be liable for restitution and compensatory damages to any health  
14 plan, pharmacy, covered individual or other person harmed by the  
15 violation and further shall be subject to a penalty not exceeding the  
16 greater of (1) [~~one~~] four thousand dollars for the first violation and  
17 [~~two~~] ten thousand [~~five-hundred~~] dollars for each subsequent violation  
18 or (2) the aggregate economic gross receipts attributable to all  
19 violations, as determined by the superintendent at a hearing.

20 § 2906. Licensing of a pharmacy benefit manager. (a) The superinten-  
21 dent may issue a pharmacy benefit manager's license to any person, firm,  
22 association or corporation who or that has complied with the require-  
23 ments of this article, including regulations promulgated by the super-  
24 intendent. The superintendent, in consultation with the commissioner of  
25 health, [~~may~~] shall establish, by regulation, minimum standards for the  
26 issuance of a license to a pharmacy benefit manager.

27 (b) The minimum standards established under this subsection [~~may~~]  
28 shall contain both prerequisites for the issuance of a license and  
29 requirements for maintenance of a license and shall address, without  
30 limitation:

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

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

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

37 (4) unfair claims practices in connection with the performance of  
38 pharmacy benefit management services; [~~and~~]

39 (5) pricing models used by pharmacy benefit managers both for their  
40 services and for the payment of services to the pharmacy benefit manag-  
41 er;

42 (6) standards and practices used in the creation of pharmacy networks  
43 and contracting with network pharmacies and other providers, including  
44 promotion and use of independent and community pharmacies and patient  
45 access and minimizing excessive concentration and vertical integration  
46 of markets; and

47 (7) protection of consumers.

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

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

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

5 (d)(1) Before a pharmacy benefit manager's license shall be issued or  
6 renewed, the prospective licensee shall properly file in the office of  
7 the superintendent [~~a written~~] an application therefor in such form or  
8 forms and supplements thereto as the superintendent prescribes, and pay  
9 a fee of [~~two~~] eight thousand dollars for each year or fraction of a  
10 year in which a license shall be valid.

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

15 (e)[~~(1)~~] If an application for a renewal license shall have been filed  
16 with the superintendent [~~before November first of the year of~~] at least  
17 two months before its expiration, then the license sought to be renewed  
18 shall continue in full force and effect either until the issuance by the  
19 superintendent of the renewal license applied for or until five days  
20 after the superintendent shall have refused to issue such renewal  
21 license and given notice of such refusal to the applicant.

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

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

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

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

46 (i) No pharmacy benefit manager shall engage in any practice or action  
47 that a health plan [~~or provider~~] is prohibited from engaging in pursuant  
48 to this chapter.

49 § 2907. Revocation or suspension of a registration or license of a  
50 pharmacy benefit manager. (a) The superintendent [~~may refuse to renew,~~]  
51 may revoke, or may suspend for a period the superintendent determines  
52 the registration or license of any pharmacy benefit manager if, after  
53 notice and hearing, the superintendent determines that the registrant or  
54 licensee or any member, principal, officer, director, or controlling  
55 person of the registrant or licensee, has:



1 (1) violated any insurance laws, section two hundred eighty-a of the  
2 public health law or violated any regulation, subpoena or order of the  
3 superintendent or of another state's insurance commissioner, or has  
4 violated any law in the course of his or her dealings in such capacity  
5 after such registration or license has been issued or renewed pursuant  
6 to [~~section two thousand nine hundred six of~~] this article;

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

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

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

13 (B) demonstrated incompetence;

14 (C) demonstrated untrustworthiness; or

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

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

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

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

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

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

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

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

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

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

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

1 (2) If any such registration or license held by a firm, association or  
2 corporation be revoked, no member of such firm or association and no  
3 officer or director of such corporation or any controlling person of the  
4 registrant or licensee shall be entitled to obtain any registration or  
5 license[~~, or to be named as a sub-licensee in any such license,~~] under  
6 this article for the same period of time, unless the superintendent  
7 determines, after notice and hearing, that such member, officer or  
8 director was not personally at fault in the matter on account of which  
9 such registration or license was revoked.

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

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

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

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

35 § 2908. Penalties for violations. (a) The superintendent, in [~~lieu of~~  
36 ~~revoking or suspending the registration or license of a registrant or~~  
37 ~~licensee in accordance with the provisions of this article]~~ addition to  
38 any other power conferred by law, may in any one proceeding by order,  
39 require the registrant or licensee who violates the provisions of this  
40 article or section two hundred eighty-a of the public health law, or any  
41 regulation promulgated thereunder to make restitution and pay compensa-  
42 tory damages, in an amount to be determined by the superintendent, to  
43 any person injured by the unlawful actions of said registrant or licen-  
44 see and to pay to the people of this state a penalty in a sum not  
45 exceeding the greater of (1) [~~one~~] four thousand dollars for each  
46 offense and [~~two~~] ten thousand [~~five hundred~~] dollars for each subse-  
47 quent violation or (2) the aggregate gross receipts attributable to all  
48 offenses.

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

1 § 2909. Stay or suspension of superintendent's determination. The  
2 commencement of a proceeding under article seventy-eight of the civil  
3 practice law and rules, to review the action of the superintendent in  
4 suspending or revoking or refusing to renew any certificate under this  
5 article, shall stay such action of the superintendent for a period of  
6 thirty days. Such stay shall not be extended for a longer period unless  
7 the court shall determine, after a preliminary hearing of which the  
8 superintendent is notified forty-eight hours in advance, that a stay of  
9 the superintendent's action pending the final determination or further  
10 order of the court will not unduly injure the interests of the people of  
11 the state.

12 § 2910. Revoked registrations or licenses. (a)(1) No person, firm,  
13 association, corporation or other entity subject to the provisions of  
14 this article whose registration or license under this article has been  
15 revoked, or whose registration or license to engage in the business of  
16 pharmacy benefit management in any capacity has been revoked by any  
17 other state or territory of the United States shall become employed or  
18 appointed by a pharmacy benefit manager as an officer, director, manager,  
19 controlling person or for other services, without the prior written  
20 approval of the superintendent, unless such services are for maintenance  
21 or are clerical or ministerial in nature.

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

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

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

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

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

55 (c) The provisions of this section shall not apply to the ownership of  
56 shares of any corporation registered or licensed pursuant to this arti-

1 cle if the shares of such corporation are publicly held and traded in  
2 the over-the-counter market or upon any national or regional securities  
3 exchange.

4 § 2911. Additional obligations. (a) A pharmacy benefit manager shall  
5 assist a health plan in answering any inquiry made under section three  
6 hundred eight of this chapter.

7 (b) No pharmacy benefit manager shall violate any provisions of the  
8 public health law applicable to pharmacy benefit managers.

9 (c) No pharmacy benefit manager shall permit any subcontractor, affil-  
10 iate, subsidiary, or other individual or entity performing pharmacy  
11 benefit management services for a pharmacy benefit manager to take any  
12 action which would violate any provision of law if taken by the pharmacy  
13 benefit manager. A pharmacy benefit manager shall be responsible for the  
14 actions of any subcontractor, affiliate, subsidiary, or other individual  
15 or entity who violates any provision of this article in performance of  
16 any pharmacy benefit management services for such pharmacy benefit  
17 manager whether or not the pharmacy benefit manager was aware of, or  
18 sanctioned, the conduct.

19 § 2912. Change of address. A registrant or licensee under this article  
20 shall inform the superintendent by a means acceptable to the superinten-  
21 dent of a change of address within thirty days of the change.

22 § ~~2912~~ 2913. Applicability of other laws. Nothing in this article  
23 shall be construed to exempt a pharmacy benefit manager from complying  
24 with the provisions of articles twenty-one and forty-nine of this chap-  
25 ter and articles forty-four and forty-nine and section two hundred  
26 eighty-a of the public health law, section three hundred sixty-four-j of  
27 the social services law, or any other provision of this chapter or the  
28 financial services law.

29 § ~~2913~~ 2914. Assessments. ~~[Pharmacy]~~ Notwithstanding section two  
30 hundred six of the financial services law, pharmacy benefit managers  
31 that file a registration with the department or are licensed by the  
32 department shall be assessed by the superintendent for the operating  
33 expenses of the department that are ~~solely~~ attributable to regulating  
34 such pharmacy benefit managers in such proportions as the superintendent  
35 shall deem just and reasonable.

36 § 3. The state finance law is amended by adding a new section 99-oo to  
37 read as follows:

38 § 99-oo. Pharmacy benefit manager regulatory fund. 1. There is hereby  
39 established in the joint custody of the state comptroller and the  
40 commissioner of taxation and finance a special fund to be known as the  
41 "pharmacy benefit manager (PBM) regulatory fund".

42 2. Money allocated to the PBM regulatory fund shall be kept separate  
43 and shall not be commingled with any other funds in the custody of the  
44 state comptroller.

45 3. Such fund shall consist of money received by the state as fees  
46 under article twenty-nine of the insurance law or penalties ordered  
47 under article twenty-nine of the insurance law and all other monies  
48 appropriated, credited, or transferred thereto from any other fund or  
49 source pursuant to law. All monies shall remain in such fund unless and  
50 until directed by statute or appropriation.

51 § 4. Section 4 of a chapter of the laws of 2021 amending the public  
52 health law relating to pharmacy benefit managers; amending the insurance  
53 law relating to registration and licensing of pharmacy benefit managers;  
54 and repealing certain provisions of the public health law relating ther-  
55 eto, as proposed in legislative bills numbers S. 3762 and A. 1396, is  
56 amended to read as follows:

1 § 4. Severability. If any provision of this act, or any application  
2 of any provision of this act, is held to be invalid, or ruled [~~by any~~  
3 ~~federal agency~~] to violate or be inconsistent with any applicable feder-  
4 al law or regulation, that shall not affect the validity or effective-  
5 ness of any other provision of this act, or of any other application of  
6 any provision of this act. In particular, with respect to paragraph (a)  
7 of subdivision 1 of section 280-a of the public health law, as added by  
8 section one of this act, if it is held that any category of health plan  
9 may not be lawfully included in the definition, then it shall be  
10 excluded from the definition and that shall not exclude other health  
11 plans from the definition.

12 § 5. Section 5 of a chapter of the laws of 2021 amending the public  
13 health law relating to pharmacy benefit managers; amending the insurance  
14 law relating to registration and licensing of pharmacy benefit managers;  
15 and repealing certain provisions of the public health law relating ther-  
16 eto, as proposed in legislative bills numbers S. 3762 and A. 1396, is  
17 amended to read as follows:

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 superintendent of financial services and the commis-~~  
22 ~~sioner of health shall make regulations and take other actions reason-~~  
23 ~~ably necessary to implement this act on that date] immediately.~~

24 § 6. This act shall take effect immediately; provided however that  
25 sections one, two, three and four of this act shall take effect on the  
26 same date and in the same manner as a chapter of the laws of 2021 amend-  
27 ing the public health law relating to pharmacy benefit managers; amend-  
28 ing the insurance law relating to registration and licensing of pharmacy  
29 benefit managers; and repealing certain provisions of the public health  
30 law relating thereto, as proposed in legislative bills numbers S. 3762  
31 and A. 1396, takes effect.