STATE OF NEW YORK

7837

IN SENATE

January 12, 2022

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

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:

Section 1. Subdivisions 1, 2, 3 and 5 of section 280-a of the public health law, as added by 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, are amended to read as follows:

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

(a) "Health plan [~~or provider~~]" means an entity for which a pharmacy benefit manager provides pharmacy benefit management [~~including, but not limited to: (i)~~] **services and that is** a health benefit plan or other entity that approves, provides, arranges for, or pays **or reimburses in whole or in part** for health care items or services, [~~under which~~] **to include at least** prescription drugs**,** for **a substantial number of** beneficiaries [~~of the entity are purchased or which provides or arranges reimbursement in whole or in part for the purchase of prescription drugs; or (ii) a health care provider or professional that acquires prescription drugs to use or dispense in providing health care to 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~~].

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

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

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

(b) All funds received by the pharmacy benefit manager in relation to providing pharmacy benefit management services shall be received by the pharmacy benefit manager in trust [~~for the health plan or provider~~] and shall be used or distributed only pursuant to the pharmacy benefit manager's contract with the health plan [~~or provider~~] or applicable law; including any administrative fee or payment to the pharmacy benefit manager expressly provided for in the contract to compensate the pharmacy benefit manager for its services. Any funds received by the pharmacy benefit manager through spread pricing shall be subject to this paragraph. In addition to any other power conferred by law the superintendent shall have the authority to prescribe rules concerning pharmacy benefit manager administrative fees, including limitations on their form and use.

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

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

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

(f) Any information required to be disclosed by a pharmacy benefit manager to a health plan [~~or provider~~] under this section that is reasonably designated by the pharmacy benefit manager as proprietary or trade secret information shall be kept confidential by the health plan [~~or provider~~], except as required or permitted by law, including disclosure necessary to prosecute or defend any legitimate legal claim or cause of action. Designation of information as proprietary or trade secret information under this subdivision shall have no effect on the obligations of any pharmacy benefit manager or health plan to provide that information to the department of health or the department of financial services.

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

~~(i)~~] may make regulations defining, limiting, and relating to the duties, obligations, requirements and other provisions relating to pharmacy benefit managers under this subdivision[~~; and~~

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

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

3. Prescriptions. A pharmacy benefit manager may not substitute or cause the substituting of one prescription drug for another in dispensing a prescription, or alter or cause the altering of the terms of a prescription, except with the approval of the prescriber or as explicitly required or permitted by law**, including regulations of the department of financial services or the department of health. The superintendent and commissioner, in coordination with each other, are authorized to promulgate regulations to determine when substitution of prescription drugs may be required or permitted**.

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

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

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

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

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

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

§ 2. Article 29 of the insurance law, as added by 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, is amended to read as follows:

ARTICLE 29

PHARMACY BENEFIT MANAGERS

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

2904. Reporting requirements for pharmacy benefit managers.
2905. Acting without a license.
2906. Licensing of a pharmacy benefit manager.
2907. Revocation or suspension of a registration or license of a pharmacy benefit manager.
2908. Penalties for violations.
2909. Stay or suspension of superintendent's determination.
2910. Revoked registrations or licenses.
2911. **Additional obligations.**
2912. Change of address.
[~~2912.~~] **2913.** Applicability of other laws.
[~~2913.~~] **2914.** Assessments.

§ 2901. Definitions. For purposes of this article:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(5) pricing models used by pharmacy benefit managers both for their services and for the payment of services to the pharmacy benefit manager;

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

(7) protection of consumers.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(B) demonstrated incompetence;

(C) demonstrated untrustworthiness; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§ 4. Section 4 of 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, is amended to read as follows:

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

§ 5. Section 5 of 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, is amended to read as follows:

§ 5. This act shall take effect [~~on the ninetieth day after it shall become a law and shall apply to any contract for providing pharmacy benefit management made or renewed on or after that date. Effective immediately, the superintendent of financial services and the commissioner of health shall make regulations and take other actions reasonably necessary to implement this act on that date~~] **immediately**.

§ 6. This act shall take effect immediately; provided however that sections one, two, three and four of this act shall take effect on the same date and in the same manner as 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, takes effect.