

STATE OF NEW YORK

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2021-2022 Regular Sessions

IN ASSEMBLY

January 11, 2021

Introduced by M. of A. GOTTFRIED, CAHILL, DARLING, DINOWITZ, EPSTEIN, GRIFFIN, STERN, TAGUE, TAYLOR, THIELE, ZEBROWSKI, WEPRIN, L. ROSENTHAL, CYMBROWITZ, HUNTER, GUNTHER, GALEF, McDONOUGH, RA, BYRNES, SEAWRIGHT, ENGLEBRIGHT, JONES, SIMON, BARRETT, JEAN-PIERRE, NORRIS, OTIS, LUPARDO, MORINELLO, BUTTENSCHON, WALLACE -- 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 Section 280-a of the public health law is REPEALED and a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,

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

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

5 (i) mail service pharmacy;

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

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

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

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

16 (vi) disease management;

17 (vii) drug utilization review or prior authorization;

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

20 (ix) contracting with network pharmacies; and

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

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

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

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

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

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

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

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

39 2. Duty, accountability and transparency. (a) The pharmacy benefit
40 manager shall have a duty and obligation to the covered individual and
41 the health plan or provider, and shall perform pharmacy benefit manage-
42 ment services with care, skill, prudence, diligence, and professional-
43 ism, and for the best interests of the covered individual, and the
44 health plan or provider. Where there is a conflict in the pharmacy
45 benefit manager's duty or obligation under this paragraph to the covered
46 individual and any other party, the duty or obligation to the covered
47 individual shall be primary.

48 (b) All funds received by the pharmacy benefit manager in relation to
49 providing pharmacy benefit management services shall be received by the
50 pharmacy benefit manager in trust for the health plan or provider and
51 shall be used or distributed only pursuant to the pharmacy benefit
52 manager's contract with the health plan or provider or applicable law;
53 including any administrative fee or payment to the pharmacy benefit
54 manager expressly provided for in the contract to compensate the pharma-
55 cy benefit manager for its services. Any funds received by the pharmacy

1 benefit manager through spread pricing shall be subject to this para-
2 graph.

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

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

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

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

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

33 (i) may make regulations defining, limiting, and relating to the
34 duties, obligations, requirements and other provisions relating to phar-
35 macym benefit managers under this subdivision; and

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

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

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

53 4. Appeals. A pharmacy benefit manager shall, with respect to
54 contracts between a pharmacy benefit manager and a pharmacy or, alterna-
55 tively, a pharmacy benefit manager and a pharmacy's contracting agent,
56 such as a pharmacy services administrative organization, include a

1 reasonable process to appeal, investigate and resolve disputes regarding
2 multi-source generic drug pricing. The appeals process shall include the
3 following provisions:

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

7 (b) a telephone number through which a network pharmacy may contact
8 the pharmacy benefit manager for the purpose of filing an appeal and an
9 electronic mail address of the individual who is responsible for proc-
10 essing appeals;

11 (c) the pharmacy benefit manager shall send an electronic mail message
12 acknowledging receipt of the appeal. The pharmacy benefit manager shall
13 respond in an electronic message to the pharmacy and/or the pharmacy's
14 contracting agent filing the appeal within seven business days indicat-
15 ing its determination. If the appeal is determined to be valid, the
16 maximum allowable cost for the drug shall be adjusted for the appealing
17 pharmacy effective as of the date of the original claim for payment. The
18 pharmacy benefit manager shall require the appealing pharmacy to reverse
19 and rebill the claim in question in order to obtain the corrected
20 reimbursement;

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

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

34 5. Contract provisions. No pharmacy benefit manager shall, with
35 respect to contracts between such pharmacy benefit manager and a pharma-
36 cy or, alternatively, such pharmacy benefit manager and a pharmacy's
37 contracting agent, such as a pharmacy services administrative organiza-
38 tion:

39 (a) prohibit or penalize a pharmacist or pharmacy from disclosing to
40 an individual purchasing a prescription medication information regard-
41 ing:

42 (i) the cost of the prescription medication to the individual, or
43 (ii) the availability of any therapeutically equivalent alternative
44 medications or alternative methods of purchasing the prescription medi-
45 cation, including but not limited to, paying a cash price;

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

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

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

ARTICLE 29PHARMACY BENEFIT MANAGERSSection 2901. Definitions.2902. Acting without a registration.2903. Registration requirements for pharmacy benefit managers.2904. Reporting requirements for pharmacy benefit managers.2905. Acting without a license.2906. Licensing of a pharmacy benefit manager.2907. Revocation or suspension of a registration or license of a pharmacy benefit manager.2908. Penalties for violations.2909. Stay or suspension of superintendent's determination.2910. Revoked registrations or licenses.2911. Change of address.2912. Applicability of other laws.2913. 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.

§ 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 first, two thousand twenty-one and prior to January first, two thousand twenty-three, 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 to any health plan or provider or covered individual harmed by the violation and shall also be subject to a penalty not exceeding of the greater of (1) one thousand dollars for the first violation and two 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 first, two thousand twenty-one and prior to January first, two thousand twenty-three shall register with the superintendent in a manner acceptable to the superintendent, and shall pay a fee of one 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 regardless of when registration was first made.

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

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

14 § 2904. Reporting requirements for pharmacy benefit managers. (a)(1)
15 On or before July first of each year, beginning in two thousand twenty-
16 one, every pharmacy benefit manager shall report to the superintendent,
17 in a statement subscribed and affirmed as true under penalties of perju-
18 ry, the information requested by the superintendent including, without
19 limitation,

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

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

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

33 (2) The superintendent may address to any pharmacy benefit manager or
34 its officers any inquiry in relation to its provision of pharmacy bene-
35 fit management services or any matter connected therewith. Every phar-
36 armacy benefit manager or person so addressed shall reply in writing to
37 such inquiry promptly and truthfully, and such reply shall be, if
38 required by the superintendent, subscribed by such individual, or by
39 such officer or officers of the pharmacy benefit manager, as the super-
40 intendent shall designate, and affirmed by them as true under the penal-
41 ties of perjury.

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

52 (c) All information, documents and material disclosed by a pharmacy
53 benefit manager under this section and in the possession or under
54 control of the superintendent shall be deemed confidential and not
55 subject to public disclosure except (1) by court order when relevant and
56 material in a civil or criminal action or proceeding, or (2) where and

1 as the superintendent determines that disclosure is in the public inter-
2 est. This subsection shall not apply to information, documents and mate-
3 rials where they are in the possession and under the control of a person
4 or entity other than the superintendent.

5 § 2905. Acting without a license. (a) No person, firm, association,
6 corporation or other entity may act as a pharmacy benefit manager on or
7 after January first, two thousand twenty-three without having authority
8 to do so by virtue of a license issued in force pursuant to the
9 provisions of this article.

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

16 § 2906. Licensing of a pharmacy benefit manager. (a) The superinten-
17 dent may issue a pharmacy benefit manager's license to any person, firm,
18 association or corporation who or that has complied with the require-
19 ments of this article, including regulations promulgated by the super-
20 intendent. The superintendent, in consultation with the commissioner of
21 health, may establish, by regulation, minimum standards for the issuance
22 of a license to a pharmacy benefit manager.

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

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

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

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

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

33 (5) protection of consumers.

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

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

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

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

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

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

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

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

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

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

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

35 § 2907. Revocation or suspension of a registration or license of a
36 pharmacy benefit manager. (a) The superintendent may refuse to renew,
37 may revoke, or may suspend for a period the superintendent determines
38 the registration or license of any pharmacy benefit manager if, after
39 notice and hearing, the superintendent determines that the registrant or
40 licensee or any member, principal, officer, director, or controlling
41 person of the registrant or licensee, has:

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

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

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

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

54 (B) demonstrated incompetence;

55 (C) demonstrated untrustworthiness; or

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

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

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

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

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

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

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

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

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

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

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

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

51 (f) If any corporation, firm, association or person aggrieved shall
52 file with the superintendent a verified complaint setting forth facts
53 tending to show sufficient ground for the revocation or suspension of
54 any pharmacy benefit manager's registration or license, and the super-
55 intendent finds the complaint credible, then the superintendent shall,

1 after notice and a hearing, determine whether such registration or
2 license shall be suspended or revoked.

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

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

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

21 § 2908. Penalties for violations. (a) The superintendent, in lieu of
22 revoking or suspending the registration or license of a registrant or
23 licensee in accordance with the provisions of this article, may in any
24 one proceeding by order, require the registrant or licensee to pay to
25 the people of this state a penalty in a sum not exceeding the greater of
26 (1) one thousand dollars for each offense and two thousand five hundred
27 dollars for each subsequent violation or (2) the aggregate gross
28 receipts attributable to all offenses.

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

37 § 2909. Stay or suspension of superintendent's determination. The
38 commencement of a proceeding under article seventy-eight of the civil
39 practice law and rules, to review the action of the superintendent in
40 suspending or revoking or refusing to renew any certificate under this
41 article, shall stay such action of the superintendent for a period of
42 thirty days. Such stay shall not be extended for a longer period unless
43 the court shall determine, after a preliminary hearing of which the
44 superintendent is notified forty-eight hours in advance, that a stay of
45 the superintendent's action pending the final determination or further
46 order of the court will not unduly injure the interests of the people of
47 the state.

48 § 2910. Revoked registrations or licenses. (a)(1) No person, firm,
49 association, corporation or other entity subject to the provisions of
50 this article whose registration or license under this article has been
51 revoked, or whose registration or license to engage in the business of
52 pharmacy benefit management in any capacity has been revoked by any
53 other state or territory of the United States shall become employed or
54 appointed by a pharmacy benefit manager as an officer, director, manag-
55 er, controlling person or for other services, without the prior written

1 approval of the superintendent, unless such services are for maintenance
2 or are clerical or ministerial in nature.

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

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

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

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

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

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

41 § 2911. Change of address. A registrant or licensee under this article
42 shall inform the superintendent by a means acceptable to the superinten-
43 dent of a change of address within thirty days of the change.

44 § 2912. Applicability of other laws. Nothing in this article shall be
45 construed to exempt a pharmacy benefit manager from complying with the
46 provisions of articles twenty-one and forty-nine of this chapter and
47 articles forty-four and forty-nine and section two hundred eighty-a of
48 the public health law, section three hundred sixty-four-j of the social
49 services law, or any other provision of this chapter or the financial
50 services law.

51 § 2913. Assessments. Pharmacy benefit managers that file a registra-
52 tion with the department or are licensed by the department shall be
53 assessed by the superintendent for the operating expenses of the depart-
54 ment that are solely attributable to regulating such pharmacy benefit
55 managers in such proportions as the superintendent shall deem just and
56 reasonable.

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

4 (b) "Defined violation" means the commission by a person of an act
5 prohibited by: subsection (a) of section one thousand one hundred two,
6 section one thousand two hundred fourteen, one thousand two hundred
7 seventeen, one thousand two hundred twenty, one thousand three hundred
8 thirteen, subparagraph (B) of paragraph two of subsection (i) of section
9 one thousand three hundred twenty-two, subparagraph (B) of paragraph two
10 of subsection (i) of section one thousand three hundred twenty-four, two
11 thousand one hundred two, two thousand one hundred seventeen, two thou-
12 sand one hundred twenty-two, two thousand one hundred twenty-three,
13 subsection (p) of section two thousand three hundred thirteen, section
14 two thousand three hundred twenty-four, two thousand five hundred two,
15 two thousand five hundred three, two thousand five hundred four, two
16 thousand six hundred one, two thousand six hundred two, two thousand six
17 hundred three, two thousand six hundred four, two thousand six hundred
18 six, two thousand seven hundred three, two thousand nine hundred two,
19 two thousand nine hundred five, three thousand one hundred nine, three
20 thousand two hundred twenty-four-a, three thousand four hundred twenty-
21 nine, three thousand four hundred thirty-three, paragraph seven of
22 subsection (e) of section three thousand four hundred twenty-six, four
23 thousand two hundred twenty-four, four thousand two hundred twenty-five,
24 four thousand two hundred twenty-six, seven thousand eight hundred nine,
25 seven thousand eight hundred ten, seven thousand eight hundred eleven,
26 seven thousand eight hundred thirteen, seven thousand eight hundred
27 fourteen and seven thousand eight hundred fifteen of this chapter; or
28 section 135.60, 135.65, 175.05, 175.45, or 190.20, or article one
29 hundred five of the penal law.

30 § 4. Severability. If any provision of this act, or any application
31 of any provision of this act, is held to be invalid, or ruled by any
32 federal agency to violate or be inconsistent with any applicable federal
33 law or regulation, that shall not affect the validity or effectiveness
34 of any other provision of this act, or of any other application of any
35 provision of this act.

36 § 5. This act shall take effect on the ninetieth day after it shall
37 become a law and shall apply to any contract for providing pharmacy
38 benefit management made or renewed on or after that date. Effective
39 immediately, the superintendent of financial services and the commis-
40 sioner of health shall make regulations and take other actions reason-
41 ably necessary to implement this act on that date.