

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:

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.

LBD00570-04-2

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

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

14 (i) mail service pharmacy;

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

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

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

23 (v) patient compliance, therapeutic intervention, or generic substi-
24 tution programs;

25 (vi) disease management;

26 (vii) drug utilization review or prior authorization;

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

29 (ix) contracting with network pharmacies; and

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

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

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

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

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

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

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

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

48 2. Duty, accountability and transparency. (a) (i) The pharmacy bene-
49 fit manager shall have a duty and obligation to ~~[the covered individual~~
50 ~~and the health plan or provider, and shall]~~ perform pharmacy benefit
51 management services with care, skill, prudence, diligence, and profes-
52 sionalism~~[, and for the best interests of the covered individual, and~~
53 ~~the health plan or provider. Where there is a conflict in the pharmacy~~
54 ~~benefit manager's duty or obligation under this paragraph to the covered~~
55 ~~individual and any other party, the duty or obligation to the covered~~
56 ~~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.