

1 AN ACT to create the Pharmacy Benefit Management and
2 Regulation Act.

3 Be it enacted by the People of the State of Illinois,
4 represented in the General Assembly:

5 Section 1. Short title. This Act may be cited as the
6 Pharmacy Benefit Management Regulation Act.

7 Section 5. Purpose and intent. This Act establishes
8 standards and criteria for the regulation and licensing of
9 pharmacy benefit management companies. The purpose of this
10 Act is to promote, preserve, and protect the public health,
11 safety, and welfare by and through effective regulation and
12 licensing of pharmacy benefit management companies.

13 Section 10. Definitions. For purposes of this Act:

14 "Board of Pharmacy" or "Board" means the State Board of
15 Pharmacy.

16 "Cease and desist" is an order of the Board prohibiting a
17 pharmacy benefit manager or pharmacy benefit management
18 company or other person or entity from continuing a
19 particular course of conduct that violates this Act or its
20 rules.

21 "Director" means the Director of Insurance.

22 "Enrollee" means an individual who has been enrolled in a
23 pharmacy benefit management plan.

24 "Insolvent" or "insolvency" means a financial situation
25 in which, based upon the financial information required by
26 this Act for the preparation of the pharmacy benefit
27 management company's annual statement, the assets of the
28 pharmacy benefit management company are less than the sum of
29 all of its liabilities and required reserves.

30 "Pharmacists services" includes drug therapy and other

1 patient care services provided by a licensed pharmacist
2 intended to achieve outcomes related to the cure or
3 prevention of a disease, elimination or reduction of a
4 patient's symptoms, or arresting or slowing of a disease
5 process as defined in the rules of the Board.

6 "Pharmacists" means any individual properly licensed as a
7 pharmacist by the Department of Professional Regulation.

8 "Pharmacy" means any appropriately licensed place within
9 this State where drugs are dispensed and pharmacist services
10 are provided.

11 "Pharmacy benefits management company" or "PBM" means a
12 business that administers the prescription drug and device
13 portion of health insurance plans on behalf of plan sponsors,
14 such as self-insured employers, insurance companies, unions,
15 and health maintenance organizations.

16 "Pharmacy benefit management plan" means an arrangement
17 for the delivery of prescription services in which a pharmacy
18 benefit management company undertakes to provide, arrange
19 for, pay for, or reimburse any of the costs of prescription
20 services for an enrollee on a prepaid or insured basis which
21 (i) contains one or more incentive arrangements intended to
22 influence the cost or level of prescription services between
23 the plan sponsor and one or more pharmacies with respect to
24 the delivery of prescription services and (ii) requires or
25 creates benefit payment differential incentives for enrollees
26 to use under contract with the pharmacy benefit management
27 company. A pharmacy benefit plan does not mean an employee
28 welfare benefit plan (as defined in Section 3(1) of the
29 Employee Retirement Income Security Act of 1974, 29 U.S.C.
30 1002(1)), which is self-insured or self-funded.

31 Section 15. Certificate of authority.

32 (a) No person or organization may establish or operate a
33 pharmacy benefit management company in this State to provide

1 pharmacy benefit management plans without obtaining a
2 certificate of authority from the Board. All PBMs providing
3 pharmacy benefit management plans in this State shall obtain
4 a certificate of authority from the Board of pharmacy every 4
5 years.

6 An organization or person may apply to the Board to
7 obtain a certificate of authority to establish and operate a
8 PBM in compliance with this Act if the organization obtains
9 from the Director an annual license to do business in this
10 State.

11 (b) The Board may suspend or revoke any certificate of
12 authority issued to a pharmacy benefit management company
13 under this Act or deny an application for a certificate of
14 authority if it finds that:

15 (1) the pharmacy benefit management company is
16 operating significantly in contravention of its basic
17 organizational document;

18 (2) the pharmacy benefit management company does
19 not arrange for pharmacists services;

20 (3) the pharmacy benefit management company has
21 failed to meet the requirements for issuance of a
22 certificate of authority as set forth in this Act;

23 (4) the pharmacy benefit management company is
24 unable to fulfill its obligation to furnish pharmacists
25 services as required under its pharmacy benefit
26 management plan;

27 (5) the pharmacy benefit management company is no
28 longer financially responsible and may reasonably be
29 expected to be unable to meet its obligations to
30 enrollees or prospective enrollees;

31 (6) the pharmacy benefit management company, or any
32 person on its behalf, has advertised or merchandised its
33 services in an untrue, misrepresentative, misleading,
34 deceptive, or unfair manner;

1 (7) the continued operation of the pharmacy benefit
2 management company would be hazardous to its enrollees;

3 (8) the pharmacy benefit management company has
4 failed to file an annual statement with the Director in a
5 timely manner; or

6 (9) the pharmacy benefit management company has
7 otherwise failed to substantially comply with this Act.

8 (c) When the certificate of authority of a pharmacy
9 benefit management company is revoked, the organization shall
10 proceed, immediately following the effective date of the
11 order of revocation, to wind up its affairs and shall conduct
12 no further business except as may be essential to the orderly
13 conclusion of the affairs of the organization. The Board may
14 permit such further operation of the organization as the
15 Board may find to be in the best interest of enrollees to the
16 end that the enrollees will be afforded the greatest
17 practical opportunity to obtain pharmacists services.

18 Section 20. License.

19 (a) The Director shall not issue an annual license to do
20 business in this State to any PBM providing pharmacy benefit
21 management plans until he is satisfied that the pharmacy
22 benefit management company:

23 (1) has paid all fees, taxes, and charges required
24 by law;

25 (2) has made any deposit required by this Act;

26 (3) has the minimum capital and surplus
27 requirements specified by the Director;

28 (4) has filed a financial statement or statements
29 and any reports, certificates, or other documents the
30 Director considers necessary to secure a full and
31 accurate knowledge of its affairs and financial
32 condition;

33 (5) is solvent and its financial condition, method

1 of operation, and manner of doing business are such as to
2 satisfy the Director that it can meet its obligations to
3 all enrollees; and

4 (6) has otherwise complied with all the
5 requirements of law.

6 (b) This license shall be in addition to the certificate
7 of authority required by the Board. A nonrefundable license
8 application fee of \$500 shall accompany each application for
9 a license to transact the business in this State. The fee
10 shall be collected by the Director and paid directly into the
11 Pharmacy Benefit Company Regulation Fund to provide expenses
12 for the regulation, supervision, and examination of all
13 entities subject to regulation under this Act.

14 The license shall be signed by the Director or a duly
15 authorized agent of the Director and shall expire on the next
16 June 30 after the date on which it becomes effective.

17 (c) All PBMs providing pharmacy benefit management plans
18 shall obtain an annual renewal of its license from the
19 Director. The Director may refuse to renew the license of any
20 pharmacy benefit management company or may renew the license
21 subject to any restrictions considered appropriate by the
22 Director, if he or she finds an impairment of required
23 capital and surplus or if it finds that the pharmacy benefit
24 management company has not satisfied all the conditions set
25 forth in this Act. The Director shall not fail to renew the
26 license of any pharmacy benefit management company to
27 transact business in this State without giving the pharmacy
28 benefit management company 10 days' notice and giving it an
29 opportunity to be heard. The hearing may be informal, and the
30 Director and the pharmacy benefit management company may
31 waive the required notice.

32 Section 25. Annual statement.

33 (a) A PBM providing pharmacy management benefit plans in

1 this State shall file a statement with the Director annually
2 by March 1. The statement shall be verified by at least 2
3 principal officers and shall cover the preceding calendar
4 year. A pharmacy benefit management company shall also send a
5 copy of the statement to the Board.

6 (b) The statement shall be on forms prescribed by the
7 Director and shall include:

8 (1) a financial statement of the organization,
9 including its balance sheet and income statement for the
10 preceding year;

11 (2) the number of persons enrolled during the year,
12 the number of enrollees as of the end of the year, and
13 the number of enrollments terminated during the year; and

14 (3) any other information relating to the
15 operations of the pharmacy benefit management company
16 required by the Director pursuant to this Act.

17 (c) If the pharmacy benefit management company is
18 audited annually by an independent certified public
19 accountant, a copy of the certified audit report shall be
20 filed annually with the Director by June 30.

21 (d) The Director may extend the time prescribed for any
22 pharmacy benefit management company for filing annual
23 statements or other reports or exhibits of any for good cause
24 shown. However, the Director shall not extend the time for
25 filing annual statements beyond 60 days after the time
26 prescribed by subsection (a) of this Section. A pharmacy
27 benefit management company that fails to file its annual
28 statement within the time prescribed by this Section may have
29 its license revoked by the Director or its certificate of
30 authority revoked or suspended by the Board until the annual
31 statement is filed.

32 Section 30. Financial examination.

33 (a) Instead of or in addition to making his or her own

1 financial examination of a pharmacy benefit management
2 company, the Director may accept the report of a financial
3 examination of other person responsible for the pharmacy
4 benefit management companies under the laws of another state
5 certified by the insurance supervisory official, similar
6 regulatory agency, or the state health supervisory official
7 of another state.

8 (b) The Director shall coordinate financial examinations
9 of a PBM that provides pharmacy management benefit plans in
10 this State to ensure an appropriate level of regulatory
11 oversight and to avoid any undue duplication of effort or
12 regulation. The pharmacy benefit management company being
13 examined shall pay the cost of the examination. The cost of
14 the examination shall be deposited into the Pharmacy Benefit
15 Company Regulation Fund, a special fund created in the State
16 treasury. Moneys in the Fund shall be used to pay the
17 expenses of administering this Act.

18 Section 35. Assessment.

19 (a) The expense of administering this Act, including the
20 cost incurred by the Director and the Board, shall be
21 assessed annually by the Board against all pharmacy benefit
22 management companies operating in this State. Before
23 determining the assessment, the Board shall request from the
24 Director an estimate of all expenses for the regulation,
25 supervision, and examination of all entities subject to
26 regulation under this Act. The assessment shall be in
27 proportion to the business done in this State.

28 (b) All fees assessed under this Act and paid to the
29 Board shall be deposited into the Pharmacy Benefit Company
30 Regulation Fund.

31 (c) The Board shall assess each pharmacy benefit
32 management company annually for its just share of expenses.
33 The assessment shall be in proportion to the business done in

1 this State. The Board shall provide the Director an amount
2 from the Pharmacy Benefit Company Regulation Fund to cover
3 all expenses incurred by the Director for the regulation
4 under this Act.

5 (d) The Board shall give each pharmacy benefit
6 management company notice of the assessment, which shall be
7 paid to the Board on or before March 1 of each year. A
8 pharmacy benefit management company that fails to pay the
9 assessment on or before the date prescribed shall be subject
10 to a penalty imposed by the Board. The penalty shall be 10%
11 of the assessment and interest for the period between the due
12 date and the date of full payment. If a payment is made in an
13 amount later found to be in error, the Board shall (i) if an
14 additional amount is due, notify the company of the
15 additional amount and the company shall pay the additional
16 amount within 14 days after the date of the notice or (ii) if
17 an overpayment is made, order a refund.

18 If an assessment made under this Act is not paid to the
19 Board by the prescribed date, the amount of the assessment,
20 penalty, and interest may be recovered from the defaulting
21 company in an action brought at the request of the Board by
22 the Attorney General made in the name and for the use of the
23 State in the appropriate circuit court after 10 days' notice
24 to the company. The certificate of authority of any
25 defaulting company to transact business in this State may be
26 revoked or suspended by the Board until it has paid the
27 assessment.

28 Section 40. PBM contracts. A PBM that contracts with a
29 pharmacy or pharmacist to provide pharmacists services
30 through a pharmacy management plan for enrollees in this
31 State shall file the contract with the Board 30 days before
32 the execution of the contract. The contract shall be deemed
33 approved unless the Board disapproves the contract within 30

1 days after filing with the Board. Disapproval shall be in
2 writing and set forth the reasons for disapproval. A copy the
3 disapproval shall be delivered to the PBM. The Board,
4 consistent with its responsibility for protecting the public
5 interest, shall develop formal criteria for the approval and
6 disapproval of PBM contracts.

7 Section 45. Enforcement.

8 (a) The Board shall develop formal investigation and
9 compliance procedures with respect to complaints by plan
10 sponsors, pharmacists, and enrollees concerning the failure
11 of a pharmacy benefit management company or the pharmacy
12 benefit manager to comply with the provisions of this Act. If
13 the Board has reason to believe that there is a violation of
14 this Act, it shall issue and serve upon the pharmacy benefit
15 management company or the pharmacy benefit manager concerned
16 a statement of the charges and a notice of a hearing to be
17 held at a time and place fixed in the notice, which shall not
18 be less than 30 days after notice is served. The notice shall
19 require the pharmacy benefit management company or the
20 pharmacy benefit manager to show cause why an order should
21 not be issued directing the alleged offender to cease and
22 desist from the violation. At the hearing, the pharmacy
23 benefit management company or the pharmacy benefit manager
24 shall have an opportunity to be heard and to show cause why
25 an order should not be issued requiring the pharmacy benefit
26 management company or the pharmacy benefit manager to cease
27 and desist from the violation.

28 (b) The Board may make an examination concerning the
29 quality of services of any pharmacy benefit management
30 company and providers with whom the pharmacy benefit
31 management company has contracts, agreements, or other
32 arrangements pursuant to its pharmacy benefit management plan
33 as often as the Board deems necessary for the protection of

1 the interests of the people of this State. The pharmacy
2 benefit management company being examined shall pay the cost
3 of the examination.

4 Section 50. Prohibited practices.

5 (a) A pharmacy benefit management company or its
6 representative may not cause or knowingly permit the use of
7 (i) advertising that is untrue or misleading, (ii)
8 solicitation that is untrue or misleading, or (iii) any form
9 of evidence of coverage that is deceptive.

10 (b) A pharmacy benefit management company, unless
11 licensed as an insurer, may not use in its name, contracts,
12 or literature (i) any of the words "insurance", "casualty",
13 "surety", or "mutual" or (ii) any other words descriptive of
14 the insurance, casualty, or surety business or deceptively
15 similar to the name or description of any insurance or
16 fidelity and surety insurer doing business in this State.

17 (c) A pharmacy benefit management company may not
18 discriminate on the basis of race, creed, color, sex, or
19 religion in the selection of pharmacies for participation in
20 the organization.

21 (d) A pharmacy benefit management company may not
22 unreasonably discriminate against pharmacists when
23 contracting for pharmacist services.

24 Section 55. Disclosures. All of the following shall be
25 provided to the pharmacy benefit company's enrollees of a
26 pharmacy benefit management plan at the time of enrollment or
27 at the time the contract is issued and shall be made
28 available upon request or at least annually:

29 (1) A list of the names and locations of all
30 affiliated providers.

31 (2) A description of the service area or areas
32 within which the pharmacy benefit company provides

1 prescription services.

2 (3) A description of the method of resolving
3 complaints of covered persons, including a description of
4 any arbitration procedure if complaints may be resolved
5 through a specified arbitration agreement.

6 (4) Notice that the pharmacy benefit management
7 company is subject to regulation in this State by both
8 the State Board of Pharmacy and the Director of
9 Insurance.

10 (5) A prominent notice included within the evidence
11 of coverage, providing substantially the following: "If
12 you have any questions regarding an appeal or grievance
13 concerning the pharmacist services that you have been
14 provided, which have not been satisfactorily addressed by
15 your plan, you may contact the State Pharmacy Board."
16 The notice shall also provide the toll-free telephone
17 number, mailing address, and electronic mail address of
18 the State Board of Pharmacy.

19 Section 60. Privacy. An enrollee in a pharmacy benefit
20 management plan has the right to privacy and confidentiality
21 in pharmacist services. This right may be expressly waived in
22 writing by the enrollee or the enrollee's guardian.

23 Section 65. Insolvency.

24 (a) If a pharmacy benefit management company becomes
25 insolvent or ceases to be a company in this State in any
26 assessable or license year, the company shall remain liable
27 for the payment of the assessment for the period in which it
28 operated as a pharmacy benefit management company in this
29 State.

30 (b) In the event of an insolvency of a pharmacy benefit
31 management company, the Director may, after notice and
32 hearing, levy an assessment on pharmacy benefit management

1 companies licensed to do business in this State. The
2 assessments shall be paid quarterly to the Director, and upon
3 receipt by the Director shall be paid over into an escrow
4 account in the Pharmacy Benefit Company Regulation Fund. This
5 escrow account shall be solely for the benefit of enrollees
6 of an insolvent pharmacy benefit management company.

7 Section 95. Severability. The provisions of this Act
8 are severable under Section 1.31 of the Statute on Statutes.

9 Section 97. The State Finance Act is amended by adding
10 Section 5.570 as follows:

11 (30 ILCS 105/5.570 new)

12 Sec. 5.570. The Pharmacy Benefit Company Regulation
13 Fund.