

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 5.595 as follows:

11 (30 ILCS 105/5.595 new)

12 Sec. 5.595. The Pharmacy Benefit Company Regulation  
13 Fund.