



93RD GENERAL ASSEMBLY

State of Illinois

2003 and 2004

Introduced 02/09/04, by David E. Miller

SYNOPSIS AS INTRODUCED:

New Act
30 ILCS 105/5.625 new

Creates the Pharmacy Benefit Management Regulation Act. Establishes the standards and criteria for regulation and licensing of pharmacy benefit management companies. Requires pharmacy benefit management companies to obtain a license from the Director of Insurance and to obtain a certificate of authority from the State Pharmacy Board. Provides for financial examination of those companies. Grants enforcement powers to the Director of Insurance and the State Pharmacy Board. Imposes fees and assessments upon pharmacy benefit management companies. Provides for the fees and assessments to be deposited into the Pharmacy Benefit Company Regulation Fund, a special fund in the State treasury. Amends the State Finance Act to add the Fund to the list of special funds. Effective immediately.

LRB093 19271 SAS 45006 b

FISCAL NOTE ACT
MAY APPLY

A BILL FOR

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 Act
10 is to promote, preserve, and protect the public health, safety,
11 and welfare by and through effective regulation and licensing
12 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 particular
19 course of conduct that violates this Act or its rules.

20 "Director" means the Director of Insurance.

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

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

29 "Pharmacists services" includes drug therapy and other
30 patient care services provided by a licensed pharmacist
31 intended to achieve outcomes related to the cure or prevention

1 of a disease, elimination or reduction of a patient's symptoms,
2 or arresting or slowing of a disease process as defined in the
3 rules of the Board.

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

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

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

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

29 Section 15. Certificate of authority.

30 (a) No person or organization may establish or operate a
31 pharmacy benefit management company in this State to provide
32 pharmacy benefit management plans without obtaining a
33 certificate of authority from the Board. All PBMs providing
34 pharmacy benefit management plans in this State shall obtain a
35 certificate of authority from the Board of pharmacy every 4

1 years.

2 An organization or person may apply to the Board to obtain
3 a certificate of authority to establish and operate a PBM in
4 compliance with this Act if the organization obtains from the
5 Director an annual license to do business in this State.

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

10 (1) the pharmacy benefit management company is
11 operating significantly in contravention of its basic
12 organizational document;

13 (2) the pharmacy benefit management company does not
14 arrange for pharmacists services;

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

18 (4) the pharmacy benefit management company is unable
19 to fulfill its obligation to furnish pharmacists services
20 as required under its pharmacy benefit management plan;

21 (5) the pharmacy benefit management company is no
22 longer financially responsible and may reasonably be
23 expected to be unable to meet its obligations to enrollees
24 or prospective enrollees;

25 (6) the pharmacy benefit management company, or any
26 person on its behalf, has advertised or merchandised its
27 services in an untrue, misrepresentative, misleading,
28 deceptive, or unfair manner;

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

31 (8) the pharmacy benefit management company has failed
32 to file an annual statement with the Director in a timely
33 manner; or

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

36 (c) When the certificate of authority of a pharmacy benefit

1 management company is revoked, the organization shall proceed,
2 immediately following the effective date of the order of
3 revocation, to wind up its affairs and shall conduct no further
4 business except as may be essential to the orderly conclusion
5 of the affairs of the organization. The Board may permit such
6 further operation of the organization as the Board may find to
7 be in the best interest of enrollees to the end that the
8 enrollees will be afforded the greatest practical opportunity
9 to obtain pharmacists services.

10 Section 20. License.

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

15 (1) has paid all fees, taxes, and charges required by
16 law;

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

18 (3) has the minimum capital and surplus requirements
19 specified by the Director;

20 (4) has filed a financial statement or statements and
21 any reports, certificates, or other documents the Director
22 considers necessary to secure a full and accurate knowledge
23 of its affairs and financial condition;

24 (5) is solvent and its financial condition, method of
25 operation, and manner of doing business are such as to
26 satisfy the Director that it can meet its obligations to
27 all enrollees; and

28 (6) has otherwise complied with all the requirements of
29 law.

30 (b) This license shall be in addition to the certificate of
31 authority required by the Board. A nonrefundable license
32 application fee of \$500 shall accompany each application for a
33 license to transact the business in this State. The fee shall
34 be collected by the Director and paid directly into the
35 Pharmacy Benefit Company Regulation Fund to provide expenses

1 for the regulation, supervision, and examination of all
2 entities subject to regulation under this Act.

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

6 (c) All PBMs providing pharmacy benefit management plans
7 shall obtain an annual renewal of its license from the
8 Director. The Director may refuse to renew the license of any
9 pharmacy benefit management company or may renew the license
10 subject to any restrictions considered appropriate by the
11 Director, if he or she finds an impairment of required capital
12 and surplus or if it finds that the pharmacy benefit management
13 company has not satisfied all the conditions set forth in this
14 Act. The Director shall not fail to renew the license of any
15 pharmacy benefit management company to transact business in
16 this State without giving the pharmacy benefit management
17 company 10 days' notice and giving it an opportunity to be
18 heard. The hearing may be informal, and the Director and the
19 pharmacy benefit management company may waive the required
20 notice.

21 Section 25. Annual statement.

22 (a) A PBM providing pharmacy management benefit plans in
23 this State shall file a statement with the Director annually by
24 March 1. The statement shall be verified by at least 2
25 principal officers and shall cover the preceding calendar year.
26 A pharmacy benefit management company shall also send a copy of
27 the statement to the Board.

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

30 (1) a financial statement of the organization,
31 including its balance sheet and income statement for the
32 preceding year;

33 (2) the number of persons enrolled during the year, the
34 number of enrollees as of the end of the year, and the
35 number of enrollments terminated during the year; and

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

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

8 (d) The Director may extend the time prescribed for any
9 pharmacy benefit management company for filing annual
10 statements or other reports or exhibits of any for good cause
11 shown. However, the Director shall not extend the time for
12 filing annual statements beyond 60 days after the time
13 prescribed by subsection (a) of this Section. A pharmacy
14 benefit management company that fails to file its annual
15 statement within the time prescribed by this Section may have
16 its licensed revoked by the Director or its certificate of
17 authority revoked or suspended by the Board until the annual
18 statement is filed.

19 Section 30. Financial examination.

20 (a) Instead of or in addition to making his or her own
21 financial examination of a pharmacy benefit management
22 company, the Director may accept the report of a financial
23 examination of other person responsible for the pharmacy
24 benefit management companies under the laws of another state
25 certified by the insurance supervisory official, similar
26 regulatory agency, or the state health supervisory official of
27 another state.

28 (b) The Director shall coordinate financial examinations
29 of a PBM that provides pharmacy management benefit plans in
30 this State to ensure an appropriate level of regulatory
31 oversight and to avoid any undue duplication of effort or
32 regulation. The pharmacy benefit management company being
33 examined shall pay the cost of the examination. The cost of the
34 examination shall be deposited into the Pharmacy Benefit
35 Company Regulation Fund, a special fund created in the State

1 treasury. Moneys in the Fund shall be used to pay the expenses
2 of administering this Act.

3 Section 35. Assessment.

4 (a) The expense of administering this Act, including the
5 cost incurred by the Director and the Board, shall be assessed
6 annually by the Board against all pharmacy benefit management
7 companies operating in this State. Before determining the
8 assessment, the Board shall request from the Director an
9 estimate of all expenses for the regulation, supervision, and
10 examination of all entities subject to regulation under this
11 Act. The assessment shall be in proportion to the business done
12 in this State.

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

16 (c) The Board shall assess each pharmacy benefit management
17 company annually for its just share of expenses. The assessment
18 shall be in proportion to the business done in this State. The
19 Board shall provide the Director an amount from the Pharmacy
20 Benefit Company Regulation Fund to cover all expenses incurred
21 by the Director for the regulation under this Act.

22 (d) The Board shall give each pharmacy benefit management
23 company notice of the assessment, which shall be paid to the
24 Board on or before March 1 of each year. A pharmacy benefit
25 management company that fails to pay the assessment on or
26 before the date prescribed shall be subject to a penalty
27 imposed by the Board. The penalty shall be 10% of the
28 assessment and interest for the period between the due date and
29 the date of full payment. If a payment is made in an amount
30 later found to be in error, the Board shall (i) if an
31 additional amount is due, notify the company of the additional
32 amount and the company shall pay the additional amount within
33 14 days after the date of the notice or (ii) if an overpayment
34 is made, order a refund.

35 If an assessment made under this Act is not paid to the

1 Board by the prescribed date, the amount of the assessment,
2 penalty, and interest may be recovered from the defaulting
3 company in an action brought at the request of the Board by the
4 Attorney General made in the name and for the use of the State
5 in the appropriate circuit court after 10 days' notice to the
6 company. The certificate of authority of any defaulting company
7 to transact business in this State may be revoked or suspended
8 by the Board until it has paid the assessment.

9 Section 40. PBM contracts. A PBM that contracts with a
10 pharmacy or pharmacist to provide pharmacists services through
11 a pharmacy management plan for enrollees in this State shall
12 file the contract with the Board 30 days before the execution
13 of the contract. The contract shall be deemed approved unless
14 the Board disapproves the contract within 30 days after filing
15 with the Board. Disapproval shall be in writing and set forth
16 the reasons for disapproval. A copy the disapproval shall be
17 delivered to the PBM. The Board, consistent with its
18 responsibility for protecting the public interest, shall
19 develop formal criteria for the approval and disapproval of PBM
20 contracts.

21 Section 45. Enforcement.

22 (a) The Board shall develop formal investigation and
23 compliance procedures with respect to complaints by plan
24 sponsors, pharmacists, and enrollees concerning the failure of
25 a pharmacy benefit management company or the pharmacy benefit
26 manager to comply with the provisions of this Act. If the Board
27 has reason to believe that there is a violation of this Act, it
28 shall issue and serve upon the pharmacy benefit management
29 company or the pharmacy benefit manager concerned a statement
30 of the charges and a notice of a hearing to be held at a time
31 and place fixed in the notice, which shall not be less than 30
32 days after notice is served. The notice shall require the
33 pharmacy benefit management company or the pharmacy benefit
34 manager to show cause why an order should not be issued

1 directing the alleged offender to cease and desist from the
2 violation. At the hearing, the pharmacy benefit management
3 company or the pharmacy benefit manager shall have an
4 opportunity to be heard and to show cause why an order should
5 not be issued requiring the pharmacy benefit management company
6 or the pharmacy benefit manager to cease and desist from the
7 violation.

8 (b) The Board may make an examination concerning the
9 quality of services of any pharmacy benefit management company
10 and providers with whom the pharmacy benefit management company
11 has contracts, agreements, or other arrangements pursuant to
12 its pharmacy benefit management plan as often as the Board
13 deems necessary for the protection of the interests of the
14 people of this State. The pharmacy benefit management company
15 being examined shall pay the cost of the examination.

16 Section 50. Prohibited practices.

17 (a) A pharmacy benefit management company or its
18 representative may not cause or knowingly permit the use of (i)
19 advertising that is untrue or misleading, (ii) solicitation
20 that is untrue or misleading, or (iii) any form of evidence of
21 coverage that is deceptive.

22 (b) A pharmacy benefit management company, unless licensed
23 as an insurer, may not use in its name, contracts, or
24 literature (i) any of the words "insurance", "casualty",
25 "surety", or "mutual" or (ii) any other words descriptive of
26 the insurance, casualty, or surety business or deceptively
27 similar to the name or description of any insurance or fidelity
28 and surety insurer doing business in this State.

29 (c) A pharmacy benefit management company may not
30 discriminate on the basis of race, creed, color, sex, or
31 religion in the selection of pharmacies for participation in
32 the organization.

33 (d) A pharmacy benefit management company may not
34 unreasonably discriminate against pharmacists when contracting
35 for pharmacist services.

1 Section 55. Disclosures. All of the following shall be
2 provided to the pharmacy benefit company's enrollees of a
3 pharmacy benefit management plan at the time of enrollment or
4 at the time the contract is issued and shall be made available
5 upon request or at least annually:

6 (1) A list of the names and locations of all affiliated
7 providers.

8 (2) A description of the service area or areas within
9 which the pharmacy benefit company provides prescription
10 services.

11 (3) A description of the method of resolving complaints
12 of covered persons, including a description of any
13 arbitration procedure if complaints may be resolved
14 through a specified arbitration agreement.

15 (4) Notice that the pharmacy benefit management
16 company is subject to regulation in this State by both the
17 State Board of Pharmacy and the Director of Insurance.

18 (5) A prominent notice included within the evidence of
19 coverage, providing substantially the following: "If you
20 have any questions regarding an appeal or grievance
21 concerning the pharmacist services that you have been
22 provided, which have not been satisfactorily addressed by
23 your plan, you may contact the State Pharmacy Board.". The
24 notice shall also provide the toll-free telephone number,
25 mailing address, and electronic mail address of the State
26 Board of Pharmacy.

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

31 Section 65. Insolvency.

32 (a) If a pharmacy benefit management company becomes
33 insolvent or ceases to be a company in this State in any

1 assessable or license year, the company shall remain liable for
2 the payment of the assessment for the period in which it
3 operated as a pharmacy benefit management company in this
4 State.

5 (b) In the event of an insolvency of a pharmacy benefit
6 management company, the Director may, after notice and hearing,
7 levy an assessment on pharmacy benefit management companies
8 licensed to do business in this State. The assessments shall be
9 paid quarterly to the Director, and upon receipt by the
10 Director shall be paid over into an escrow account in the
11 Pharmacy Benefit Company Regulation Fund. This escrow account
12 shall be solely for the benefit of enrollees of an insolvent
13 pharmacy benefit management company.

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

16 Section 97. The State Finance Act is amended by adding
17 Section 5.625 as follows:

18 (30 ILCS 105/5.625 new)

19 Sec. 5.625. The Pharmacy Benefit Company Regulation Fund.

20 Section 999. Effective date. This Act takes effect upon
21 becoming law.