
By: **Delegate Goldwater**

Introduced and read first time: February 6, 2002

Assigned to: Economic Matters

A BILL ENTITLED

1 AN ACT concerning

2 **Pharmacy Benefit Management Regulation Act**

3 FOR the purpose of requiring a pharmacy benefit management company or PBM to
4 obtain a certificate of authority from the State Board of Pharmacy before the
5 PBM is established or operates in the State; providing for the term of the
6 certificate of authority; authorizing the Board to suspend or revoke a certificate
7 of authority or deny an application under certain circumstances; requiring a
8 PBM to obtain a license from the Insurance Commissioner to do business in the
9 State; requiring the license applicant to file a certain application and pay a
10 certain application fee; authorizing the Commissioner to issue the license only if
11 the Commissioner is satisfied that the PBM meets certain conditions; providing
12 for the term of the license; authorizing the Commissioner to refuse to renew the
13 license or to renew the license subject to restrictions under certain
14 circumstances; providing for certain notice and a certain hearing before refusal
15 to renew the license; requiring each PBM to file certain contracts with the Board
16 within a certain time; providing for the approval or disapproval of certain
17 contracts; requiring each PBM to file certain annual statements and reports
18 with the Commissioner on or before certain dates; authorizing the
19 Commissioner to make certain financial examinations; authorizing the
20 Commissioner to accept certain reports of certain financial examinations from
21 other states; requiring the PBM being examined to pay the cost of the
22 examination; authorizing the Board to make certain assessments in a certain
23 manner; providing for a certain special fund; providing for a certain penalty for
24 failure to pay the assessment; providing for a certain assessment if a PBM
25 becomes insolvent; providing for a certain escrow account under certain
26 circumstances; requiring each PBM to provide its enrollees with certain
27 information and certain notices at certain times; establishing that an enrollee
28 has a certain right to privacy and confidentiality; requiring the Board to develop
29 certain investigation and compliance procedures with respect to certain
30 complaints about PBMs; establishing a certain procedure for the Board to follow
31 if the Board has reason to believe there is a violation of this Act; establishing
32 certain prohibited acts; defining certain terms; and generally relating to the
33 regulation of pharmacy benefit management companies.

34 BY adding to

1 Article - Insurance
2 Section 14-501 through 14-514, inclusive, to be under the new subtitle "Subtitle
3 5. Pharmacy Benefit Management Regulation Act"
4 Annotated Code of Maryland
5 (1997 Volume and 2001 Supplement)

6 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
7 MARYLAND, That the Laws of Maryland read as follows:

8 **Article - Insurance**

9 **SUBTITLE 5. PHARMACY BENEFIT MANAGEMENT REGULATION ACT.**
10 14-501.

11 (A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS
12 INDICATED.

13 (B) "BOARD" MEANS THE STATE BOARD OF PHARMACY.

14 (C) "ENROLLEE" MEANS AN INDIVIDUAL WHO IS ENROLLED IN A PHARMACY
15 BENEFIT MANAGEMENT PLAN.

16 (D) "PHARMACIST" HAS THE MEANING STATED IN § 12-101 OF THE HEALTH
17 OCCUPATIONS ARTICLE.

18 (E) "PHARMACIST SERVICES" INCLUDES DRUG THERAPY AND OTHER PATIENT
19 CARE SERVICES PROVIDED BY A LICENSED PHARMACIST INTENDED TO ACHIEVE
20 OUTCOMES THAT RELATE TO THE CURE OR PREVENTION OF A DISEASE,
21 ELIMINATION OR REDUCTION OF A PATIENT'S SYMPTOMS, OR ARRESTING OR
22 SLOWING OF A DISEASE PROCESS AS DEFINED IN THE REGULATIONS OF THE BOARD.

23 (F) "PHARMACY" HAS THE MEANING STATED IN § 12-101 OF THE HEALTH
24 OCCUPATIONS ARTICLE.

25 (G) "PHARMACY BENEFIT MANAGEMENT COMPANY" OR "PBM" MEANS A
26 BUSINESS THAT ADMINISTERS THE PRESCRIPTION DRUG/DEVICE PORTION OF
27 HEALTH INSURANCE PLANS ON BEHALF OF PLAN SPONSORS, INCLUDING
28 SELF-INSURED EMPLOYERS, INSURERS, UNIONS, AND HEALTH MAINTENANCE
29 ORGANIZATIONS.

30 (H) (1) "PHARMACY BENEFIT MANAGEMENT PLAN" MEANS AN
31 ARRANGEMENT FOR THE DELIVERY OF PHARMACIST SERVICES:

32 (I) IN WHICH A PBM UNDERTAKES TO PROVIDE, ARRANGE FOR,
33 PAY FOR, OR REIMBURSE ANY OF THE COSTS OF PHARMACIST SERVICES FOR AN
34 ENROLLEE ON A PREPAID OR INSURED BASIS;

1 (II) THAT CONTAINS ONE OR MORE INCENTIVE ARRANGEMENTS
2 INTENDED TO INFLUENCE THE COST OR LEVEL OF PHARMACIST SERVICES BETWEEN
3 THE PLAN SPONSOR AND ONE OR MORE PHARMACIES WITH RESPECT TO THE
4 DELIVERY OF PHARMACIST SERVICES; AND

5 (III) THAT REQUIRES OR CREATES BENEFIT PAYMENT
6 DIFFERENTIAL INCENTIVES FOR ENROLLEES TO USE UNDER CONTRACT WITH THE
7 PBM.

8 (2) "PHARMACY BENEFIT MANAGEMENT PLAN" DOES NOT INCLUDE AN
9 EMPLOYEE WELFARE BENEFIT PLAN, AS DEFINED IN SECTION 3 (1) OF THE
10 EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974, 29 U.S.C. § 1002 (1), WHICH
11 IS SELF-INSURED OR SELF-FUNDED.

12 14-502.

13 THE PURPOSE OF THIS SUBTITLE IS TO PROMOTE, PRESERVE, AND PROTECT
14 THE PUBLIC HEALTH, SAFETY, AND WELFARE BY ESTABLISHING STANDARDS AND
15 CRITERIA FOR THE EFFECTIVE REGULATION AND LICENSING OF PHARMACY
16 BENEFIT MANAGEMENT COMPANIES.

17 14-503.

18 (A) A PERSON MAY NOT ESTABLISH OR OPERATE A PHARMACY BENEFIT
19 MANAGEMENT COMPANY TO PROVIDE PHARMACY BENEFIT MANAGEMENT PLANS IN
20 THE STATE WITHOUT OBTAINING A CERTIFICATE OF AUTHORITY FROM THE BOARD.

21 (B) AN APPLICANT FOR A CERTIFICATE OF AUTHORITY UNDER THIS SECTION
22 SHALL OBTAIN FROM THE COMMISSIONER A LICENSE TO DO BUSINESS IN THE STATE
23 UNDER § 14-504 OF THIS SUBTITLE.

24 (C) A CERTIFICATE OF AUTHORITY ISSUED UNDER THIS SECTION EXPIRES 4
25 YEARS AFTER ITS EFFECTIVE DATE.

26 (D) THE BOARD MAY SUSPEND OR REVOKE A CERTIFICATE OF AUTHORITY
27 ISSUED TO A PBM UNDER THIS SECTION OR DENY AN APPLICATION FOR A
28 CERTIFICATE OF AUTHORITY IF IT FINDS THAT:

29 (1) THE PBM IS OPERATING SIGNIFICANTLY IN CONTRAVENTION OF ITS
30 BASIC ORGANIZATIONAL DOCUMENT;

31 (2) THE PBM DOES NOT ARRANGE FOR PHARMACIST SERVICES;

32 (3) THE PBM FAILS TO MEET THE REQUIREMENTS FOR ISSUANCE OF A
33 CERTIFICATE OF AUTHORITY UNDER THIS SUBTITLE;

34 (4) THE PBM IS UNABLE TO FULFILL ITS OBLIGATION TO PROVIDE
35 PHARMACIST SERVICES AS REQUIRED UNDER ITS PHARMACY BENEFIT
36 MANAGEMENT PLAN;

1 (5) THE PBM IS NO LONGER FINANCIALLY RESPONSIBLE AND MAY
2 REASONABLY BE EXPECTED TO BE UNABLE TO MEET ITS OBLIGATIONS TO
3 ENROLLEES OR PROSPECTIVE ENROLLEES;

4 (6) THE PBM, OR ANOTHER PERSON ON ITS BEHALF, ADVERTISES OR
5 MERCHANDISES ITS SERVICES IN AN UNTRUE, MISREPRESENTATIVE, MISLEADING,
6 DECEPTIVE, OR UNFAIR MANNER;

7 (7) THE CONTINUED OPERATION OF THE PBM WILL BE HAZARDOUS TO
8 ITS ENROLLEES;

9 (8) THE PBM FAILS TO FILE AN ANNUAL STATEMENT WITH THE
10 COMMISSIONER IN A TIMELY MANNER; OR

11 (9) THE PBM OTHERWISE FAILS TO COMPLY SUBSTANTIALLY WITH THIS
12 SUBTITLE.

13 (E) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION,
14 WHEN THE CERTIFICATE OF AUTHORITY OF A PBM IS REVOKED, THE PBM SHALL
15 PROCEED, IMMEDIATELY AFTER THE EFFECTIVE DATE OF THE ORDER OF
16 REVOCATION, TO WIND UP ITS AFFAIRS AND MAY NOT CONDUCT ANY FURTHER
17 BUSINESS EXCEPT AS MAY BE ESSENTIAL TO THE ORDERLY CONCLUSION OF ITS
18 AFFAIRS.

19 (2) THE BOARD MAY ALLOW FURTHER OPERATION OF THE PBM AS THE
20 BOARD FINDS TO BE IN THE BEST INTEREST OF ENROLLEES TO THE END THAT THE
21 ENROLLEES WILL BE AFFORDED THE GREATEST PRACTICAL OPPORTUNITY TO
22 OBTAIN PHARMACIST SERVICES.

23 14-504.

24 (A) (1) A PHARMACY BENEFIT MANAGEMENT COMPANY SHALL OBTAIN
25 FROM THE COMMISSIONER A LICENSE TO DO BUSINESS IN THE STATE.

26 (2) THE LICENSE TO DO BUSINESS IS IN ADDITION TO THE CERTIFICATE
27 OF AUTHORITY REQUIRED BY THE BOARD UNDER § 14-503 OF THIS SUBTITLE.

28 (B) AN APPLICANT FOR A LICENSE TO DO BUSINESS UNDER THIS SECTION
29 SHALL:

30 (1) FILE WITH THE COMMISSIONER AN APPLICATION ON THE FORM
31 THAT THE COMMISSIONER REQUIRES; AND

32 (2) PAY TO THE COMMISSIONER A NONREFUNDABLE LICENSE
33 APPLICATION FEE OF \$500.

34 (C) FEES PAID UNDER SUBSECTION (B)(2) OF THIS SECTION SHALL BE
35 COLLECTED BY THE COMMISSIONER AND PAID DIRECTLY INTO A SPECIAL FUND TO
36 PROVIDE FOR THE EXPENSES OF THE REGULATION, SUPERVISION, AND
37 EXAMINATION OF PBMS SUBJECT TO REGULATION UNDER THIS SUBTITLE.

1 (D) THE COMMISSIONER MAY ISSUE A LICENSE TO DO BUSINESS IN THE
2 STATE TO A PHARMACY BENEFIT MANAGEMENT COMPANY ONLY IF THE
3 COMMISSIONER IS SATISFIED THAT THE PBM:

4 (1) PAYS ALL FEES, TAXES, AND CHARGES REQUIRED BY LAW;

5 (2) MAKES ANY DEPOSIT REQUIRED BY THIS SUBTITLE;

6 (3) HAS THE MINIMUM CAPITAL AND SURPLUS REQUIREMENT
7 SPECIFIED BY THE COMMISSIONER;

8 (4) FILES A FINANCIAL STATEMENT AND ANY REPORTS, CERTIFICATES,
9 OR OTHER DOCUMENTS THAT THE COMMISSIONER CONSIDERS NECESSARY TO
10 SECURE A FULL AND ACCURATE KNOWLEDGE OF ITS AFFAIRS AND FINANCIAL
11 CONDITION;

12 (5) IS SOLVENT AND ITS FINANCIAL CONDITION, METHOD OF
13 OPERATION, AND MANNER OF DOING BUSINESS SATISFY THE COMMISSIONER THAT
14 IT CAN MEET ITS OBLIGATIONS TO ALL ENROLLEES; AND

15 (6) OTHERWISE COMPLIES WITH THE REQUIREMENTS OF LAW.

16 (E) EACH LICENSE ISSUED UNDER THIS SECTION SHALL BE SIGNED BY THE
17 COMMISSIONER OR AN AUTHORIZED AGENT OF THE COMMISSIONER.

18 (F) (1) A LICENSE ISSUED UNDER THIS SECTION EXPIRES ON THE FIRST
19 JUNE 30 AFTER ITS EFFECTIVE DATE UNLESS IT IS RENEWED AS PROVIDED IN THIS
20 SUBSECTION.

21 (2) BEFORE A LICENSE EXPIRES, THE LICENSEE MAY RENEW IT FOR AN
22 ADDITIONAL 1-YEAR TERM.

23 (3) THE COMMISSIONER MAY REFUSE TO RENEW THE LICENSE OR MAY
24 RENEW THE LICENSE, SUBJECT TO ANY RESTRICTIONS CONSIDERED APPROPRIATE
25 BY THE COMMISSIONER, IF THE COMMISSIONER FINDS THAT:

26 (I) THERE IS AN IMPAIRMENT OF REQUIRED CAPITAL AND
27 SURPLUS; OR

28 (II) THE PBM FAILS TO SATISFY ALL THE CONDITIONS OF THIS
29 SUBTITLE.

30 (4) (I) BEFORE REFUSING TO RENEW A LICENSE UNDER THIS
31 SUBSECTION, THE COMMISSIONER SHALL GIVE THE PBM 10 DAYS' NOTICE AND AN
32 OPPORTUNITY TO BE HEARD.

33 (II) THE HEARING REQUIRED UNDER THIS PARAGRAPH MAY BE
34 INFORMAL.

35 (III) THE COMMISSIONER AND THE PBM MAY WAIVE THE REQUIRED
36 NOTICE.

1 14-505.

2 (A) EACH PBM THAT CONTRACTS WITH A PHARMACY OR PHARMACIST TO
3 PROVIDE PHARMACIST SERVICES THROUGH A PHARMACY BENEFIT MANAGEMENT
4 PLAN FOR ENROLLEES IN THE STATE SHALL FILE THE CONTRACT WITH THE BOARD
5 AT LEAST 30 DAYS BEFORE THE EXECUTION OF THE CONTRACT.

6 (B) (1) THE CONTRACT IS DEEMED APPROVED UNLESS THE BOARD
7 DISAPPROVES THE CONTRACT WITHIN 30 DAYS AFTER IT IS FILED WITH THE BOARD.

8 (2) DISAPPROVAL OF THE CONTRACT SHALL BE IN WRITING AND SHALL
9 STATE THE REASONS FOR THE DISAPPROVAL.

10 (3) A COPY OF THE DISAPPROVAL OF THE CONTRACT SHALL BE
11 DELIVERED TO THE PBM.

12 (C) THE BOARD, CONSISTENT WITH ITS RESPONSIBILITY FOR PROTECTING
13 THE PUBLIC INTEREST, SHALL DEVELOP FORMAL CRITERIA FOR THE APPROVAL AND
14 DISAPPROVAL OF PBM CONTRACTS.

15 14-506.

16 (A) (1) EACH PBM THAT PROVIDES PHARMACY BENEFIT MANAGEMENT
17 PLANS IN THE STATE SHALL FILE A STATEMENT WITH THE COMMISSIONER ON THE
18 FORM REQUIRED BY THE COMMISSIONER ON OR BEFORE MARCH 1 OF EACH YEAR IN
19 ACCORDANCE WITH THIS SECTION.

20 (2) THE STATEMENT SHALL:

21 (I) BE VERIFIED BY AT LEAST TWO PRINCIPAL OFFICERS OF THE
22 PBM; AND

23 (II) COVER THE PRECEDING CALENDAR YEAR.

24 (3) EACH PBM SHALL ALSO SEND A COPY OF THE STATEMENT TO THE
25 BOARD.

26 (B) THE ANNUAL STATEMENT SHALL INCLUDE:

27 (1) A FINANCIAL STATEMENT OF THE ORGANIZATION, INCLUDING ITS
28 BALANCE SHEET AND INCOME STATEMENT FOR THE PRECEDING YEAR;

29 (2) THE NUMBER OF INDIVIDUALS ENROLLED DURING THE YEAR, THE
30 NUMBER OF ENROLLEES AS OF THE END OF THE YEAR, AND THE NUMBER OF
31 ENROLLMENTS TERMINATED DURING THE YEAR; AND

32 (3) ANY OTHER INFORMATION THAT RELATES TO THE OPERATION OF
33 THE PBM REQUIRED BY THE COMMISSIONER.

1 (C) IF THE PBM IS AUDITED ANNUALLY BY AN INDEPENDENT CERTIFIED
2 PUBLIC ACCOUNTANT, A COPY OF THE CERTIFIED AUDIT REPORT SHALL BE FILED
3 WITH THE COMMISSIONER ON OR BEFORE JUNE 30 OF EACH YEAR.

4 (D) (1) THE COMMISSIONER MAY EXTEND THE TIME FOR FILING ANNUAL
5 STATEMENTS OR OTHER REPORTS OR EXHIBITS FOR GOOD CAUSE SHOWN.

6 (2) HOWEVER, THE COMMISSION MAY NOT EXTEND THE TIME FOR
7 FILING ANNUAL STATEMENTS BEYOND 60 DAYS AFTER MARCH 1.

8 (3) A PBM THAT FAILS TO FILE ITS ANNUAL STATEMENT WITHIN THE
9 TIME REQUIRED BY THIS SECTION MAY HAVE ITS LICENSE REVOKED BY THE
10 COMMISSIONER OR ITS CERTIFICATE OF AUTHORITY REVOKED OR SUSPENDED BY
11 THE BOARD UNTIL THE ANNUAL STATEMENT IS FILED.

12 14-507.

13 (A) THE COMMISSIONER MAY MAKE A FINANCIAL EXAMINATION OF A PBM
14 THAT PROVIDES PHARMACY BENEFIT MANAGEMENT PLANS IN THE STATE.

15 (B) INSTEAD OF OR IN ADDITION TO MAKING ITS OWN FINANCIAL
16 EXAMINATION OF A PBM, THE COMMISSIONER MAY ACCEPT THE REPORT OF A
17 FINANCIAL EXAMINATION OF A PERSON RESPONSIBLE FOR THE REGULATION OF
18 PBMS UNDER THE LAWS OF ANOTHER STATE CERTIFIED BY THE INSURANCE
19 SUPERVISORY OFFICIAL, SIMILAR REGULATORY AGENCY, OR THE HEALTH
20 COMMISSIONER OF THE OTHER STATE.

21 (C) THE COMMISSIONER SHALL COORDINATE THE FINANCIAL EXAMINATIONS
22 OF A PBM THAT PROVIDES PHARMACY BENEFIT MANAGEMENT PLANS IN THE STATE
23 TO ENSURE AN APPROPRIATE LEVEL OF REGULATORY OVERSIGHT AND TO AVOID
24 ANY UNDUE DUPLICATION OF EFFORT OR REGULATION.

25 (D) (1) THE PBM BEING EXAMINED SHALL PAY THE COST OF THE
26 EXAMINATION.

27 (2) THE COST OF THE EXAMINATION SHALL BE DEPOSITED IN A SPECIAL
28 FUND TO PROVIDE FOR THE EXPENSES OF THE REGULATION, SUPERVISION, AND
29 EXAMINATION OF PBMS SUBJECT TO REGULATION UNDER THIS SUBTITLE.

30 14-508.

31 (A) (1) THE EXPENSE OF ADMINISTERING THIS SUBTITLE, INCLUDING THE
32 COSTS INCURRED BY THE COMMISSIONER AND THE BOARD, SHALL BE ASSESSED
33 ANNUALLY BY THE BOARD AGAINST ALL PBMS THAT OPERATE IN THE STATE.

34 (2) BEFORE DETERMINING THE ASSESSMENT, THE BOARD SHALL
35 REQUEST FROM THE COMMISSIONER AN ESTIMATE OF ALL EXPENSES FOR THE
36 REGULATION, SUPERVISION, AND EXAMINATION OF ALL PBMS SUBJECT TO
37 REGULATION UNDER THIS SUBTITLE.

1 (B) (1) THE FEES ASSESSED UNDER THIS SUBTITLE AND PAID TO THE
2 BOARD SHALL BE DEPOSITED IN A SPECIAL FUND TO PROVIDE FOR THE EXPENSES
3 OF THE REGULATION, SUPERVISION, AND EXAMINATION OF PBMS SUBJECT TO
4 REGULATION UNDER THIS SUBTITLE.

5 (2) THE BOARD SHALL PROVIDE THE COMMISSIONER WITH AN AMOUNT
6 FROM THE SPECIAL FUND TO COVER ALL EXPENSES INCURRED BY THE
7 COMMISSIONER FOR THE REGULATION OF PBMS UNDER THIS SUBTITLE.

8 (C) (1) THE BOARD SHALL ASSESS EACH PBM ANNUALLY ITS JUST SHARE
9 OF EXPENSE.

10 (2) THE ASSESSMENT SHALL BE IN PROPORTION TO THE BUSINESS
11 DONE IN THE STATE.

12 (3) THE BOARD SHALL GIVE EACH PBM NOTICE OF THE ASSESSMENT.

13 (4) THE ASSESSMENT SHALL BE PAID TO THE BOARD ON OR BEFORE
14 MARCH 1 OF EACH YEAR.

15 (D) (1) A PBM THAT FAILS TO PAY THE ASSESSMENT ON OR BEFORE THE
16 REQUIRED DATE SHALL BE SUBJECT TO A PENALTY IMPOSED BY THE BOARD.

17 (2) THE PENALTY SHALL BE 10% OF THE ASSESSMENT AND INTEREST
18 FOR THE PERIOD BETWEEN THE DUE DATE AND THE DATE OF FULL PAYMENT.

19 (E) WHENEVER PAYMENT OF AN ASSESSMENT IS MADE IN AN AMOUNT LATER
20 FOUND TO BE IN ERROR:

21 (1) IF AN ADDITIONAL AMOUNT IS DUE:

22 (I) THE BOARD SHALL NOTIFY THE PBM OF THE ADDITIONAL
23 AMOUNT; AND

24 (II) THE PBM SHALL PAY THE ADDITIONAL AMOUNT WITHIN 14
25 DAYS AFTER THE DATE OF THE NOTICE; OR

26 (2) IF AN OVERPAYMENT IS MADE, THE BOARD SHALL ORDER A REFUND.

27 (F) (1) IF AN ASSESSMENT MADE UNDER THIS SECTION IS NOT PAID TO THE
28 BOARD BY THE REQUIRED DATE, THE AMOUNT OF THE ASSESSMENT, PENALTY, AND
29 INTEREST MAY BE RECOVERED FROM THE DEFAULTING PBM ON MOTION OF THE
30 BOARD.

31 (2) THE MOTION SHALL BE MADE IN THE NAME AND FOR THE USE OF
32 THE STATE IN THE APPROPRIATE CIRCUIT COURT AFTER 10 DAYS' NOTICE TO THE
33 PBM.

34 (3) THE BOARD MAY SUSPEND OR REVOKE THE CERTIFICATE OF
35 AUTHORITY OF THE PBM UNTIL THE PBM PAYS THE ASSESSMENT.

1 14-509.

2 (A) IN THIS SECTION, "INSOLVENT" MEANS A FINANCIAL SITUATION IN
3 WHICH, BASED ON THE FINANCIAL INFORMATION REQUIRED BY THIS SUBTITLE FOR
4 THE PREPARATION OF THE PBM'S ANNUAL STATEMENT, THE ASSETS OF THE PBM
5 ARE LESS THAN THE SUM OF ALL OF ITS LIABILITIES AND REQUIRED RESERVES.

6 (B) IF A PBM BECOMES INSOLVENT OR CEASES TO BE A PBM IN THE STATE IN
7 AN ASSESSABLE OR LICENSE YEAR, THE PBM SHALL REMAIN LIABLE FOR THE
8 PAYMENT OF THE ASSESSMENT FOR THE PERIOD IN WHICH IT OPERATED AS A PBM
9 IN THE STATE.

10 (C) (1) IN THE EVENT A PBM BECOMES INSOLVENT, THE COMMISSIONER
11 MAY, AFTER NOTICE AND HEARING, LEVY AN ASSESSMENT ON ALL PBMS LICENSED
12 TO DO BUSINESS IN THE STATE.

13 (2) THE ASSESSMENTS SHALL BE PAID QUARTERLY TO THE
14 COMMISSIONER.

15 (3) ON RECEIPT BY THE COMMISSIONER, THE ASSESSMENTS SHALL BE
16 PAID OVER INTO AN ESCROW ACCOUNT IN THE SPECIAL FUND.

17 (4) THIS ESCROW ACCOUNT SHALL BE SOLELY FOR THE BENEFIT OF
18 ENROLLEES OF THE INSOLVENT PBM.

19 14-510.

20 (A) (1) EACH PBM SHALL PROVIDE TO ITS ENROLLEES THE INFORMATION
21 CONTAINED IN SUBSECTION (B) OF THIS SECTION AT THE TIME OF ENROLLMENT OR
22 AT THE TIME THE CONTRACT IS ISSUED.

23 (2) THIS INFORMATION SHALL ALSO BE MADE AVAILABLE TO
24 ENROLLEES ON REQUEST OR AT LEAST ANNUALLY.

25 (B) THE INFORMATION REQUIRED TO BE PROVIDED TO ENROLLEES
26 INCLUDES:

27 (1) A LIST OF THE NAMES AND LOCATIONS OF ALL AFFILIATED
28 PROVIDERS;

29 (2) A DESCRIPTION OF THE SERVICE AREA OR AREAS WITHIN WHICH
30 THE PBM PROVIDES PHARMACIST SERVICES;

31 (3) A DESCRIPTION OF THE METHOD OF RESOLVING COMPLAINTS OF
32 COVERED PERSONS, INCLUDING A DESCRIPTION OF ANY ARBITRATION PROCEDURE
33 IF COMPLAINTS MAY BE RESOLVED THROUGH A SPECIFIED ARBITRATION
34 AGREEMENT;

35 (4) NOTICE THAT THE PBM IS SUBJECT TO REGULATION IN THE STATE
36 BY BOTH THE BOARD AND THE COMMISSIONER; AND

1 (5) A PROMINENT NOTICE INCLUDED IN THE EVIDENCE OF COVERAGE
2 THAT:

3 (I) PROVIDES THE TOLL-FREE TELEPHONE NUMBER, MAILING
4 ADDRESS, AND ELECTRONIC MAIL ADDRESS OF THE BOARD; AND

5 (II) PROVIDES SUBSTANTIALLY THE FOLLOWING STATEMENT: "IF
6 YOU HAVE ANY QUESTIONS REGARDING AN APPEAL OR GRIEVANCE CONCERNING
7 THE PHARMACIST SERVICES THAT YOU HAVE BEEN PROVIDED, WHICH HAVE NOT
8 BEEN SATISFACTORILY ADDRESSED BY YOUR PLAN, YOU MAY CONTACT THE STATE
9 BOARD OF PHARMACY."

10 14-511.

11 (A) THE ENROLLEE IN A PHARMACY BENEFIT MANAGEMENT PLAN HAS THE
12 RIGHT TO PRIVACY AND CONFIDENTIALITY IN PHARMACIST SERVICES.

13 (B) THIS RIGHT MAY BE EXPRESSLY WAIVED IN WRITING BY THE ENROLLEE
14 OR THE ENROLLEE'S GUARDIAN.

15 14-512.

16 (A) THE BOARD SHALL DEVELOP FORMAL INVESTIGATION AND COMPLIANCE
17 PROCEDURES WITH RESPECT TO COMPLAINTS BY PLAN SPONSORS, PHARMACISTS,
18 OR ENROLLEES ABOUT THE FAILURE OF A PBM TO COMPLY WITH THIS SUBTITLE.

19 (B) (1) IF THE BOARD HAS REASON TO BELIEVE THAT THERE IS A
20 VIOLATION OF THIS SUBTITLE, THE BOARD SHALL ISSUE AND SERVE ON THE
21 VIOLATOR A STATEMENT OF THE CHARGES AND A NOTICE OF HEARING.

22 (2) THE HEARING:

23 (I) SHALL BE HELD AT THE TIME AND PLACE SET IN THE NOTICE;
24 BUT

25 (II) MAY NOT BE HELD LESS THAN 30 DAYS AFTER NOTICE IS
26 SERVED.

27 (3) THE NOTICE SHALL REQUIRE THE PBM TO SHOW CAUSE WHY AN
28 ORDER SHOULD NOT BE ISSUED THAT DIRECTS THE ALLEGED VIOLATOR TO CEASE
29 AND DESIST FROM THE VIOLATION.

30 (4) AT THE HEARING, THE PBM SHALL HAVE AN OPPORTUNITY TO BE
31 HEARD AND TO SHOW CAUSE WHY AN ORDER SHOULD NOT BE ISSUED THAT DIRECTS
32 THE PBM TO CEASE AND DESIST FROM THE VIOLATION.

33 (C) (1) THE BOARD MAY EXAMINE THE QUALITY OF SERVICES PROVIDED BY
34 A PBM AND PROVIDERS WITH WHOM THE PBM HAS CONTRACTS, AGREEMENTS, OR
35 OTHER ARRANGEMENTS IN ACCORDANCE WITH ITS PHARMACY BENEFIT

1 MANAGEMENT PLAN AS OFTEN AS THE BOARD CONSIDERS NECESSARY FOR THE
2 PROTECTION OF THE PUBLIC INTEREST.

3 (2) THE PBM BEING EXAMINED SHALL PAY THE COST OF THE
4 EXAMINATION.

5 14-513.

6 (A) A PHARMACY BENEFIT MANAGEMENT COMPANY OR ITS REPRESENTATIVE
7 MAY NOT CAUSE OR KNOWINGLY PERMIT THE USE OF:

8 (1) ADVERTISING THAT IS UNTRUE OR MISLEADING;

9 (2) SOLICITATION THAT IS UNTRUE OR MISLEADING; OR

10 (3) ANY FORM OF EVIDENCE OF COVERAGE THAT IS DECEPTIVE.

11 (B) A PHARMACY BENEFIT MANAGEMENT COMPANY, UNLESS LICENSED AS
12 AN INSURER, MAY NOT USE IN ITS NAME, CONTRACTS, OR LITERATURE:

13 (1) THE WORDS "INSURANCE", "CASUALTY", "SURETY", OR "MUTUAL"; OR

14 (2) ANY OTHER WORDS DESCRIPTIVE OF THE INSURANCE, CASUALTY,
15 OR SURETY BUSINESS OR DECEPTIVELY SIMILAR TO THE NAME OR DESCRIPTION OF
16 ANY INSURANCE OR FIDELITY AND SURETY INSURER DOING BUSINESS IN THE
17 STATE.

18 (C) A PHARMACY BENEFIT MANAGEMENT COMPANY MAY NOT DISCRIMINATE
19 ON THE BASIS OF RACE, CREED, COLOR, SEX, OR RELIGION IN THE SELECTION OF
20 PHARMACIES FOR PARTICIPATION IN THE ORGANIZATION.

21 (D) A PHARMACY BENEFIT MANAGEMENT COMPANY MAY NOT
22 UNREASONABLY DISCRIMINATE AGAINST PHARMACISTS WHEN CONTRACTING FOR
23 PHARMACIST SERVICES.

24 14-514.

25 THIS ACT MAY BE CITED AS THE PHARMACY BENEFIT MANAGEMENT
26 REGULATION ACT.

27 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
28 October 1, 2002.