

## Chapter 120-2-97

### PHARMACY BENEFITS MANAGERS REGULATION

#### Section

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**120-2-97-.01 Authority.** This Regulation is promulgated by the Commissioner of Insurance pursuant to the authority set forth in O.C.G.A. §§33-2-9 and 33-64-1 et seq.

Authority.--O.C.G.A. §§ 33-2-9 and 33-64-1 et seq.

#### **120-2-97-.02 Scope and Purpose**

- (1) This Regulation applies to any pharmacy benefits manager as defined in O.C.G.A. Section 33-64-1.
- (2) The purposes of this Regulation include:
  - (a) Providing the regulation and licensure of pharmacy benefits managers;
  - (b) Promoting the financial responsibility of pharmacy benefits managers;
  - (c) Subjecting those business entities defined in O.C.G.A. §33-64-1 to the jurisdiction of the Commissioner of Insurance; and
  - (d) Regulating pharmacy benefits managers' practices in conformity with the general purposes of the Georgia Insurance Code.

Authority.-- O.C.G.A. §§ 33-2-9 and 33-23-100 et seq.

### **120-2-97-.03 License; Application; Issuance; Renewal; Net Worth; Probationary License**

(1) It is unlawful for any person, business entity, or other entity to act as or hold itself out to be a pharmacy benefits manager in this State without a valid license issued by the Commissioner of Insurance. To qualify for and hold a license to act as a pharmacy benefits manager in this State, a pharmacy benefits manager must otherwise be in compliance with Chapter 64 of Title 33 of the Official Code of Georgia Annotated and this Regulation.

(2) The pharmacy benefits manager shall file with the Commissioner an application for a license upon a form to be furnished by the Commissioner.

(3) An audited financial statement or such other information as the Commissioner may require that demonstrates that the applicant possesses a minimum net worth of \$200,000. Letters of credit, backstop guarantees and special corporate structures will not be taken into consideration by the Commissioner in determining the net worth requirement.

(4) A Bond and proof of Errors and Omissions coverage must be included in the application and maintained by the pharmacy benefits manager.

(5) An application for a pharmacy benefits manager's license shall be accompanied by a fee of \$500.00.

(6) The Commissioner shall not issue a license or renew an existing license if he or she determines that the pharmacy benefits manager has:

(a) Misrepresented or concealed any material fact in the application for the license;

(b) Has obtained or attempted to obtain the license by misrepresentation, concealment, or other fraud; or

(c) Has failed to obtain for initial licensure or retain for annual renewal a net worth of at least \$200,000.

(7) A license issued under this section may be issued on a probationary basis in the discretion of the Commissioner. The probationary license may be issued for not longer than 12 months and not less than 3 months and is subject to revocation without a hearing. The Commissioner, at his or her discretion, shall prescribe the terms of probation, may extend the probationary period, or refuse to grant a license at the end of any probationary period.

Authority.-- O.C.G.A. §§ 33-2-9 and 33-64-1 et seq.

### **120-2-97-.04 Pharmacy benefits managers Bond; and Errors and Omissions Coverage**

(1) Every pharmacy benefits manager shall file a bond with the Commissioner. The pharmacy benefits manager shall file a certificate of such bond, in a form acceptable by a corporate surety insurer authorized to transact insurance in this state in favor of Commissioner of Insurance of the state of Georgia, continuous in form and in an amount \$100,000.

(2) The bond shall inure to the benefit of any person damaged by any fraudulent act or conduct of the pharmacy benefits manager and must be conditioned upon faithful accounting and application of all money coming into the pharmacy benefits manager's possession in connection with its activities as an pharmacy benefits manager.

(3) The bond remains in force until released by the Commissioner or canceled by the surety. Without prejudice to any liability previously incurred, the surety may cancel the bond upon thirty (30) days' advance notice to the pharmacy benefits manager and the Commissioner. A pharmacy benefits manager's license shall be suspended if it does not file with the Commissioner a replacement bond before the date of cancellation of the previous bond. A replacement bond must meet all requirements of this section for the initial bond.

(4) Each pharmacy benefits manager shall obtain errors and omissions coverage or other appropriate liability insurance, written by an insurer authorized to transact insurance in this state, in an amount of at least \$250,000.

(5) Any policy written in accordance with paragraph (4) of this Rule shall be for a term of at least one year and shall contain provisions that:

(a) Cancellation or termination of the policy is not effective except upon sixty (60) days' written notice by registered or certified mail to the other party to the policy and to the Commissioner; and

(b) The policy is automatically renewable at the expiration of the policy period except upon sixty (60) days' written notice by registered or certified mail by the party not renewing the policy to the other party to the policy and to the Commissioner.

(6) Compliance by the pharmacy benefits manager with paragraphs (1) and (4) of this Rule is a prerequisite to approval of its application by the Commissioner.

(7) Any bond and errors and omissions coverage required for licensure and renewal purposes shall be maintained in place by the pharmacy benefits manager for a period of at least one year immediately following the surrender, non-renewal or revocation of the license.

Authority.-- O.C.G.A. §§33-2-9 and 33-64-1 et seq.

### **120-2-97-.05 Annual Renewal**

(1) Each authorized pharmacy benefits manager shall file with the Commissioner an annual renewal of its license on a form prescribed by the Commissioner. The statement shall be filed annually on or before May 1. The annual renewal shall be in such form and contain such matters as the Commissioner prescribes and shall be verified by at least one officer of the pharmacy benefits manager. For good cause shown the Commissioner may extend the time for filing of the annual renewal of the license conditioned upon payment of a late fee of \$15.00 per day as prescribed by law at O.C.G.A. §33-8-1(W). In the event the pharmacy benefits manager does not timely renew its license prior to the expiration of its license, June 30, the pharmacy benefits manager will cease to have a valid license and will need to reapply for a new license prior to commencing its business or initiating new business in Georgia. If the pharmacy benefits manager fails to renew its license the Commissioner shall provide notice to the pharmacy benefits manager and the pharmacy benefits manager may invoke the right to a hearing.

(2) At the time of filing its annual renewal, the pharmacy benefits manager shall pay a filing fee of \$400.00.

(3) The pharmacy benefits manager shall at all times maintain a net worth of \$200,000. If the pharmacy benefits manager fails to maintain a net worth of \$200,000 the Commissioner, in his or her discretion, may enter any disciplinary order as he or she deems appropriate pursuant to Title 33. In order to verify the net worth of

the pharmacy benefits manager, proof that the applicant possesses a minimum net worth of \$200,000 must be included in the annual renewal filing that represents the calendar year end or fiscal year end of the pharmacy benefits manager.

Authority.-- O.C.G.A. §§33-2-9 and 33-64-1 et seq.

#### **120-2-97-.06 Examination by Commissioner; and, On-Site Visits**

(1) The Commissioner or his or her designated representative is authorized to make a complete on-site examination of the affairs of each pharmacy benefits manager as often as is deemed necessary. Whenever the Commissioner shall deem it expedient, he or she shall examine, by use of an examiner duly authorized by him or her, the affairs, transactions, accounts, records, documents, assets, liabilities, of a pharmacy benefits manager and any other facts relative to its business methods, management, and dealings with a health plan or covered entity.

(2) Any pharmacy benefits manager being examined shall provide to the Commissioner or his or her designee convenient and free access, at all reasonable hours at their offices, to all books, records, documents and other papers relating to such pharmacy benefits manager's business affairs.

(3) At the direction of the Commissioner the pharmacy benefits manager shall pay the fees and expenses of the examination. A consolidated account for the examination shall be filed by the examiner with the Commissioner.

(4) Nothing in this rule shall limit or abridge any other investigatory powers of the Commissioner vested in him or her by Title 33 of the Official Code of Georgia Annotated.

Authority.-- O.C.G.A. §§33-2-9, 33-2-12, 33-2-13, 33-2-15 and 33-64-1 et seq.

#### **120-2-97-.07 Forms**

Standard pharmacy benefits manager forms are required and will be supplied upon request by the Commissioner's office either in paper form or electronically over the internet. Applicants and licensed pharmacy benefits managers shall utilize all applicable forms in preparing applications, statements, notices of required information, and other required submissions required under Chapter 64 of Title 33 of the Official Code of Georgia Annotated.

Authority.-- O.C.G.A. §§33-2-9 and 33-64-1 et seq.

#### **120-2-97-.08 Penalties**

(1) Any person, business entity, or other entity acting as a pharmacy benefits manager without a license shall be subject to a monetary penalty of up to \$1,000.00 for each and every transaction in violation of the chapter. Any person, business entity, or other entity willfully acting as a pharmacy benefits manager without a license shall be subject to a monetary penalty of up to \$5,000.00 for each and every act in violation.

(2) In addition to all other penalties provided for under this title, the Commissioner shall have the authority to place any pharmacy benefits manager on probation for a period of time not to exceed one year for each and every act in violation of this chapter and may subject such pharmacy benefits manager to a monetary penalty of up to \$1,000.00 for each and every act in violation of this chapter. If the pharmacy benefits manager willfully

acted in violation of this chapter the monetary penalty may be increased up to \$5,000.00 for each and every act in violation.

Authority.-- O.C.G.A. §§33-2-9, 33-2-24(g) and 33-64-1 et seq..

#### **120-2-97-.09 Severability**

If any provision of this Regulation Chapter, or the application thereof to any person, business entity, or other entity or circumstance, is held invalid by a court of competent jurisdiction, the remainder of the Regulation Chapter or the applicability of such provision to other persons or circumstances shall not be affected.

Authority.-- O.C.G.A. §33-2-9.