

House Bill 991

By: Representatives Hatchett of the 150<sup>th</sup>, Knight of the 130<sup>th</sup>, England of the 116<sup>th</sup>, Stephens of the 164<sup>th</sup>, Parrish of the 158<sup>th</sup>, and others

A BILL TO BE ENTITLED  
AN ACT

1 To amend Title 31 of the Official Code of Georgia Annotated, relating to health, so as to  
2 provide for transparency relating to state healthcare plans and its contractors; to provide for  
3 a short title; to provide for definitions; to provide for an oversight committee; to provide for  
4 its members and powers; to provide for information from state contractors and others to the  
5 oversight committee regarding state healthcare plans; to provide for confidentiality of certain  
6 records; to provide for penalties; to provide for related matters; to repeal conflicting laws;  
7 and for other purposes.

8 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

9 style="text-align:center">**SECTION 1.**

10 Title 31 of the Official Code of Georgia Annotated, relating to health, is amended in  
11 Chapter 2, relating to the Department of Community Health, by adding a new Code section  
12 to read as follows:

13 "31-2-17.

14 (a) This Code section shall be known and may be cited as the 'Healthcare Transparency  
15 and Accountability Act.'

16 (b) As used in this Code section, the term:

17 (1) 'Affiliate' means a person which, either directly or indirectly through one or more  
18 intermediaries:

19 (A) Has an investment or ownership interest in a person licensed under Title 33;

20 (B) Shares common ownership with a person licensed under Title 33; or

21 (C) Has as an investor or ownership interest holder a person licensed under Title 33.

22 (2) 'Contractor' means a person licensed under Title 33 who contracts directly with the  
23 Department of Community Health or another state agency to provide services pursuant  
24 to a state healthcare plan.

25 (3) 'Oversight committee' means the Healthcare Transparency and Accountability  
26 Oversight Committee created pursuant to this Code section.

27 (4) 'State healthcare plan' means any healthcare plan or benefits administered by or  
 28 through the department or another state agency, including, but not limited to, the state  
 29 health benefit plan under Article 1 of Chapter 18 of Title 45, the plan for public  
 30 employees under Part 6 of Article 17 of Chapter 2 of Title 20, the medical assistance  
 31 program under Article 7 of Chapter 4 of Title 49, the PeachCare for Kids Program under  
 32 Article 13 of Chapter 5 of Title 49, and any other health services or benefits administered  
 33 by or on behalf of the state.

34 (c)(1) There is created the Healthcare Transparency and Accountability Oversight  
 35 Committee which shall have authority to review the performance and conduct of all state  
 36 healthcare plan contractors, their affiliate subcontractors, and their subcontractor  
 37 pharmacy benefits managers.

38 (2) The oversight committee shall be composed of nine members as follows:

39 (A) One physician, one pharmacist, and one consumer member who receives benefits  
 40 from a state healthcare plan, appointed by the Governor; and

41 (B) Six members of the General Assembly appointed as follows:

42 (i) Two members appointed by the Governor;

43 (ii) Two members appointed by the Lieutenant Governor; and

44 (iii) Two members appointed by the Speaker of the House of Representatives.

45 (3) Members shall serve two-year terms. The Governor shall designate one of his or her  
 46 appointees from the General Assembly as the chairperson.

47 (4) The oversight committee shall have the power to:

48 (A) Request and review records relating to state healthcare plan contractors, their  
 49 affiliate subcontractors, and their subcontractor pharmacy benefits managers, in  
 50 performance of their contractual obligations, including contracts, subcontracts, reports,  
 51 statements, and deidentified healthcare records;

52 (B) Utilize legislative counsel when, in the oversight committee's determination, it is  
 53 needed;

54 (C) Prepare reports using aggregated data which shall not be considered confidential  
 55 or a trade secret and which shall be made available to the General Assembly and the  
 56 public;

57 (D) Submit written questions to applicable departments, agencies, boards, and state  
 58 healthcare plan contractors, their affiliate subcontractors, and their subcontractor  
 59 pharmacy benefits manager which shall be answered no later than 30 days following  
 60 receipt of such questions;

61 (E) Prepare recommendations regarding contracting, transparency, and oversight to  
 62 applicable state departments, agencies, and boards;

- 63 (F) Prepare recommendations on legislative initiatives to the General Assembly as well  
 64 as regulatory recommendations to the Commissioner of Insurance;
- 65 (G) Retain third-party consultants, including attorneys, actuaries, accountants, and  
 66 healthcare providers such as physicians, pharmacists, nurses, and dentists, and other  
 67 experts as may be reasonably necessary to assist the oversight committee in its  
 68 functions. Any third party retained shall be under the direction and control of the  
 69 oversight committee, shall act only in an advisory capacity, and shall be subject to  
 70 maintaining confidentiality; and
- 71 (H) Request an audit of a contractor, an affiliated subcontractor, or subcontracted  
 72 pharmacy benefits manager from the Department of Audits and Accounts. The cost of  
 73 any such audit shall be borne by the contractor, affiliate subcontractor, or subcontracted  
 74 pharmacy benefits manager which is the subject of the audit.
- 75 (d)(1) A contractor, affiliate subcontractor, and subcontractor pharmacy benefits  
 76 manager shall, upon request of the oversight committee, make all books, documents,  
 77 papers, provider records, deidentified healthcare records, financial records, data, surveys,  
 78 and computer databases related to its services to the state within its care, custody, and  
 79 control available for examination by the oversight committee. All requested records shall  
 80 be provided within 30 days following a written request. All records shall be provided at  
 81 the sole cost and expense of the contractor or subcontractor.
- 82 (2) A contractor shall annually provide to the oversight committee, no later than  
 83 November 1 of each year, all reports and statements prepared pursuant to its contract with  
 84 the state; financial reports filed with the Commissioner of Insurance; and an Annual  
 85 Transparency Report which shall be made available to the public detailing the following  
 86 as it relates to a state healthcare plan:
- 87 (A) The amount it was paid by the state, including, where applicable, capitated per  
 88 member per month rates;
- 89 (B) Medical Loss Ratio;
- 90 (C) All contractual obligations with the state, including performance benchmarks, it  
 91 failed to meet;
- 92 (D) All reports prepared pursuant to its contract with the state;
- 93 (E) All dividends paid to shareholders or affiliates;
- 94 (F) Financial reports reflecting expenses, net underwriting gain, and net profit  
 95 attributable to services performed for the state;
- 96 (G) Most recent legal chart of corporate structure; and
- 97 (H) All subcontracted affiliates and the amount each affiliate was paid.
- 98 (3) A contractor or its subcontracted pharmacy benefits manager shall annually provide  
 99 to the oversight committee, no later than November 1 of each year, an Annual

100 Prescription Drug Transparency Report which shall be made available to the public  
101 detailing the following as it relates to a state healthcare plan:

102 (A) The aggregated rebates, fees, price protection payments, and any other payments  
103 collected from pharmaceutical manufacturers by the contractor or its pharmacy benefits  
104 manager and the amount retained as revenue by the contractor, the amount retained as  
105 revenue by its pharmacy benefits manager, the amount passed back to the state  
106 healthcare plan, and the amount passed to insureds at the point of sale;

107 (B) The aggregate total number of pharmacy claims, the aggregate amount paid to  
108 pharmacies for cost of drug reimbursement, the aggregate amount paid to pharmacies  
109 for dispensing fees, the aggregate amount paid to pharmacies by the state healthcare  
110 plan, and the aggregate amount paid to pharmacies by insureds via copayments;

111 (C) Any difference between the aggregate amount a state healthcare plan paid a  
112 contractor for pharmacy claims and what the pharmacies were paid and any difference  
113 between what a contractor paid for pharmacy claims and what the pharmacies were  
114 paid;

115 (D) The aggregate amount paid to pharmacies affiliated with a contractor or affiliated  
116 with its pharmacy benefits manager;

117 (E) A list of all pharmacy claims by a pharmacy for dispensed drug products appearing  
118 on the department's Select Specialty Pharmacy Rate Pricing List, including the unit  
119 price and the dispensing fee;

120 (F) The aggregate number of prior authorizations required, the aggregate costs  
121 associated with processing the prior authorizations, the aggregate number of days care  
122 was delayed as a result of prior authorizations, and the aggregate number of prior  
123 authorizations that were approved and that were denied;

124 (G) The names of the 25 prescription drugs which were subject to the most prior  
125 authorizations; and

126 (H) The names of the 50 most frequently prescribed prescription drugs.

127 (e)(1) The amount that a contractor is paid by the state and the amount that a  
128 subcontractor is paid by a contractor, including capitated per member, per month rates,  
129 shall be subject to disclosure under Chapter 18 of Title 50, relating to open records, and  
130 shall not be confidential or constitute a trade secret.

131 (2) Records, reports, documents, and data submitted to the oversight committee not  
132 otherwise subject to disclosure under Chapter 18 of Title 50 shall be treated as  
133 confidential and shall not be subject to disclosure by the oversight committee or its  
134 members; provided, however, that the annual transparency report, annual prescription  
135 drug transparency report, and any reports prepared by the oversight committee shall be

136 subject to disclosure under Chapter 18 of Title 50 and shall not be confidential or  
137 constitute a trade secret.  
138 (f) The Insurance Commissioner shall have the authority to subject any contractor or its  
139 subcontracted pharmacy benefits manager to a monetary penalty of up to \$2,000.00 for  
140 each and every act in violation of this Code section, unless the contractor or subcontractor  
141 knew or reasonably should have known that it was in violation of this Code section, in  
142 which case the monetary penalty provided for in this subsection may be increased to an  
143 amount of up to \$5,000.00 for each and every act in violation of this Code section."

144 **SECTION 2.**

145 All laws and parts of laws in conflict with this Act are repealed.