

Senate Bill 60

By: Senators Hufstetler of the 52nd, Kirkpatrick of the 32nd, Watson of the 1st, Orrock of the 36th and Strickland of the 42nd

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 64 of Title 33 of the Official Code of Georgia Annotated, relating to
2 regulation and licensure of pharmacy benefits managers, so as to provide that such managers
3 have a duty of care to insureds, health plans, and providers; to provide for definitions; to
4 provide for rules and regulations; to provide for a priority of duties; to provide for a private
5 right of action; to provide for related matters; to repeal conflicting laws; and for other
6 purposes.

7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

8 **SECTION 1.**

9 Chapter 64 of Title 33 of the Official Code of Georgia Annotated, relating to regulation and
10 licensure of pharmacy benefits managers, is amended by revising Code Section 33-64-1,
11 relating to definitions, as follows:

12 "33-64-1.

13 As used in this chapter, the term:

14 (1) 'Affiliate pharmacy' means a pharmacy which, either directly or indirectly through
15 one or more intermediaries:

- 16 (A) Has an investment or ownership interest in a pharmacy benefits manager licensed
17 under this chapter;
- 18 (B) Shares common ownership with a pharmacy benefits manager licensed under this
19 chapter; or
- 20 (C) Has an investor or ownership interest holder which is a pharmacy benefits manager
21 licensed under this chapter.
- 22 (2) 'Business entity' means a corporation, association, partnership, sole proprietorship,
23 limited liability company, limited liability partnership, or other legal entity.
- 24 (3) 'Controlled group of corporations' means any group of the following of which the
25 pharmacy benefits manager is a member:
- 26 (A) One or more chains of corporations connected through stock ownership with a
27 common parent corporation if stock possession constitutes at least 50 percent of the
28 total combined voting power of all classes of stock entitled to vote or at least 50 percent
29 of the total value of shares of all classes of stock of at least one of the other
30 corporations, excluding, in computing such voting power or value, stock owned directly
31 by such other corporations;
- 32 (B) Two or more corporations if five or fewer persons who are individuals, estates, or
33 trusts own stock possessing more than 50 percent of the total combined voting power
34 of all classes of stock of each corporation, taking into account the stock ownership of
35 each such person only to the extent such stock ownership is identical with respect to
36 each corporation;
- 37 (C) Three or more corporations each of which is a member of a group of corporations
38 described in subparagraph (A) or (B) of this paragraph, and one of which is a common
39 parent corporation included in a group of corporations described in subparagraph (A)
40 of this paragraph and also is included in a group of corporations described in
41 subparagraph (B) of this paragraph; and

42 (D) Two or more life insurers subject to taxation under federal law which are members
43 of a controlled group of corporations described in subparagraph (A), (B), or (C) of this
44 paragraph. Such insurers shall be treated as a controlled group of corporations separate
45 from any other corporations which are members of the controlled group of corporations
46 described in subparagraph (A), (B), or (C) of this paragraph.

47 ~~(3)~~(4) 'Dispenser' shall have the same meaning as in paragraph (10) of Code Section
48 16-13-21.

49 ~~(4)~~(5) 'Health plan' means an individual or group plan or program which is established
50 by contract, certificate, law, plan, policy, subscriber agreement, or any other method and
51 which is entered into, issued, or offered for the purpose of arranging for, delivering,
52 paying for, providing, or reimbursing any of the costs of health care or medical care,
53 including pharmacy services, drugs, or devices. Such term includes any health care
54 coverage provided under the state health benefit plan pursuant to Article 1 of Chapter 18
55 of Title 45; the medical assistance program pursuant to Article 7 of Chapter 4 of Title 49;
56 the PeachCare for Kids Program pursuant to Article 13 of Chapter 5 of Title 49; and any
57 other health benefit plan or policy administered by or on behalf of this state.

58 ~~(5)~~(6) 'Health system' means a hospital or any other facility or entity owned, operated,
59 or leased by a hospital and a long-term care home.

60 ~~(6)~~(7) 'Insured' means a person who receives prescription drug benefits administered by
61 a pharmacy benefits manager.

62 (8) 'Insurer' means any entity subject to the insurance laws and regulations of this state,
63 or subject to the jurisdiction of the Commissioner, that contracts or offers to contract to
64 provide, deliver, arrange for, pay for, or reimburse any of the costs of health care
65 services, including through a health plan as defined in this subsection, and shall include
66 a sickness and accident insurance company, a health maintenance organization, a
67 preferred provider organization, or any similar entity, or any other entity providing a
68 health plan of health insurance or health benefits.

69 ~~(7)~~(9) 'Maximum allowable cost' means the per unit amount that a pharmacy benefits
70 manager reimburses a pharmacist for a prescription drug, excluding dispensing fees and
71 copayments, coinsurance, or other cost-sharing charges, if any.

72 ~~(8)~~(10) 'National average drug acquisition cost' means the monthly survey of retail
73 pharmacies conducted by the federal Centers for Medicare and Medicaid Services to
74 determine average acquisition cost for Medicaid covered outpatient drugs.

75 ~~(9)~~(11) 'Pharmacy' means a pharmacy or pharmacist licensed pursuant to Chapter 4 of
76 Title 26 or another dispensing provider.

77 (12) 'Pharmacy benefits management fee' means a fee charged for the cost of providing
78 one or more pharmacy benefits management services and which does not exceed the
79 value of the service or services performed by the pharmacy benefits manager.

80 ~~(10)~~(13) 'Pharmacy benefits management services' means the following, except that such
81 term shall not include the practice of pharmacy as defined in Code Section 26-4-4:

82 (A) The administration of a plan or program that pays for, reimburses, and covers the
83 cost of drugs, devices, or pharmacy care to insureds on behalf of a health plan;

84 (B) The negotiation of the price of prescription drugs, including negotiating and
85 contracting for direct or indirect rebates, discounts, or other price concessions;

86 (C) The management of any aspect or aspects of a prescription drug benefit, including
87 the processing and payment of claims for prescription drugs, arranging alternative
88 access to or funding for prescription drugs, the performance of drug utilization review,

89 the processing of drug prior authorization requests, the adjudication of appeals or
90 grievances related to the prescription drug benefit, contracting with network

91 pharmacies, controlling the cost of covered prescription drugs, managing or providing
92 data relating to the prescription drug benefit, or the provision of services related thereto;

93 (D) The performance of any administrative, managerial, clinical, pricing, financial,
94 reimbursement, data administration or reporting, or billing service; or

95 (E) Such other services as the Commissioner may define in regulation. The term shall
96 not include the practice of pharmacy as defined in Code Section 26-4-4.

97 ~~(11)~~(14) 'Pharmacy benefits manager' means a person, business entity, or other entity that
98 directly or indirectly performs one or more pharmacy benefits management services.
99 Such The term includes a person or entity acting for a pharmacy benefits manager in a
100 contractual or employment relationship in the performance of pharmacy benefits
101 management services for a health plan, and any agent, contractor, intermediary, affiliate,
102 subsidiary, or related entity of such person who facilitates, provides, directs, or oversees
103 the provision of the pharmacy benefits management services. Such The term does not
104 include services provided by pharmacies operating under a hospital pharmacy license.
105 Such The term also does not include health systems while providing pharmacy services
106 for their patients, employees, or beneficiaries, for indigent care, or for the provision of
107 drugs for outpatient procedures. Such The term also does not include services provided
108 by pharmacies affiliated with a facility licensed under Code Section 31-44-4 or a licensed
109 group model health maintenance organization with an exclusive medical group contract
110 and which operates its own pharmacies which are licensed under Code Section 26-4-110.
111 (15) 'Pharmacy benefits manager duty' means a duty and obligation to perform pharmacy
112 benefits management services with care, skill, prudence, diligence, fairness, transparency,
113 and professionalism and, in the best interests of the insured, the health plan, and the
114 provider, to perform such services as consistent with the requirements of this chapter and
115 any regulation that may be adopted to implement this chapter.

116 ~~(12)~~(16) 'Point-of-sale fee' means all or a portion of a drug reimbursement to a pharmacy
117 or other dispenser withheld at the time of adjudication of a claim for any reason.

118 (17) 'Provider' means an individual or entity that provides, dispenses, or administers one
119 or more units of a prescription drug.

120 ~~(13)~~(18) 'Rebate' means any and all payments that accrue to a pharmacy benefits
121 manager or its health plan client, directly or indirectly, from a pharmaceutical

122 manufacturer, including but not limited to discounts, administration fees, credits,
 123 incentives, or penalties associated directly or indirectly in any way with claims
 124 administered on behalf of a health plan client and shall also include but not be limited to:

125 (A) Negotiated price concessions including but not limited to base price concessions
 126 whether described as rebates or otherwise and reasonable estimates of any price
 127 protection rebates and performance based price concessions that may accrue directly
 128 or indirectly to the insurer or health plan, or other party on behalf of the insurer or
 129 health plan, including a pharmacy benefits manager, during the coverage year from a
 130 manufacturer, dispensing pharmacy, or other party in connection with the dispensing
 131 or administration of a prescription drug; and

132 (B) Reasonable estimates of any negotiated price concessions, fees, and other
 133 administrative costs that are passed through, or are reasonably anticipated to be passed
 134 through, to the insurer or health plan, or other party on behalf of the insurer or health
 135 plan, including a pharmacy benefits manager, and serve to reduce the insurer or health
 136 plan's liabilities for a prescription drug.

137 (19) 'Related entity' means:

138 (A) Any entity, whether foreign or domestic, who is a member of any controlled group
 139 of corporations; or

140 (B) Any person other than a corporation that is treated under rules promulgated under
 141 this chapter as related to a pharmacy benefits manager.

142 ~~(14)~~(20) 'Retroactive fee' means all or a portion of a drug reimbursement to a pharmacy
 143 or other dispenser recouped or reduced following adjudication of a claim for any reason,
 144 except as otherwise permissible as described in Code Section 26-4-118.

145 (21) 'Spread pricing' means any amount charged or claimed by a pharmacy benefits
 146 manager for a prescription drug that exceeds the amount paid by the pharmacy benefits
 147 manager to the pharmacy or pharmacist for the dispensing of the prescription drug.

148 ~~(15)~~(22) 'Steering' means:

- 149 (A) Ordering an insured to use its affiliate pharmacy for the filling of a prescription or
150 the provision of pharmacy care;
- 151 (B) Ordering an insured to use an affiliate pharmacy of another pharmacy benefits
152 manager licensed under this chapter pursuant to an arrangement or agreement for the
153 filling of a prescription or the provision of pharmacy care;
- 154 (C) Offering or implementing plan designs that require an insured to utilize its affiliate
155 pharmacy or an affiliate pharmacy of another pharmacy benefits manager licensed
156 under this chapter or that increases plan or insured costs, including requiring an insured
157 to pay the full cost for a prescription when an insured chooses not to use any affiliate
158 pharmacy; or
- 159 (D) Advertising, marketing, or promoting its affiliate pharmacy or an affiliate
160 pharmacy of another pharmacy benefits manager licensed under this chapter to
161 insureds. Subject to the foregoing, a pharmacy benefits manager may include its
162 affiliated pharmacy or an affiliate pharmacy of another pharmacy benefits manager
163 licensed under this chapter in communications to patients, including patient and
164 prospective patient specific communications, regarding network pharmacies and prices,
165 provided that the pharmacy benefits manager includes information regarding eligible
166 nonaffiliated pharmacies in such communications and that the information provided is
167 accurate."

168

SECTION 2.

169 Said chapter is further amended by revising Code Section 33-64-13, relating to federal law
170 governs, as follows:

171 "33-64-13.

172 (a) To the extent that any provision of this chapter is inconsistent or conflicts with
173 applicable federal law, rule, or regulation, such applicable federal law, rule, or regulation
174 shall apply.

175 (b) In implementing the requirements of this chapter, the state shall only regulate a
176 pharmacy benefits manager or insurer to the extent permissible under applicable law."

177 **SECTION 3.**

178 Said chapter is further amended by adding a new Code section to read as follows:

179 "33-64-14.

180 (a) A pharmacy benefits manager shall owe the pharmacy benefits manager duty to any
181 insured, health plan, or provider that receives pharmacy benefits management services from
182 the pharmacy benefits manager or that furnishes, covers, receives, or is administered a unit
183 of a prescription drug for which the pharmacy benefits manager has provided pharmacy
184 benefits management services. Such duty includes:

185 (1) The pharmacy benefits manager duty owed to insureds shall include duties of care
186 and good faith and fair dealing. The Commissioner shall adopt regulations defining the
187 scope of the duties owed to insureds, including by obligating pharmacy benefits managers
188 to provide all pharmacy benefits management services related to formulary design,
189 utilization management, and grievances and appeals in a transparent manner to insureds
190 that is consistent with the best interest of insureds and to disclose all conflicts of interest
191 to insureds;

192 (2) The pharmacy benefits manager duty owed to health plans shall include duties of care
193 and good faith and fair dealing. The Commissioner shall adopt regulations defining the
194 scope of the duties owed to health plans, including by obligating pharmacy benefits
195 managers to provide transparency to health plans about amounts charged or claimed by
196 the pharmacy benefits manager in a manner that is adequate to identify all instances of
197 spread pricing and to disclose all conflicts of interest to health plans; and

198 (3) The pharmacy benefits manager duty owed to providers shall include duties of care
199 and good faith and fair dealing. The Commissioner shall adopt regulations defining the
200 scope of the duties owed to providers, including by obligating pharmacy benefits

201 managers to provide transparency to providers about amounts charged or claimed by the
202 pharmacy benefits manager in a manner that is adequate to identify all instances of spread
203 pricing and to disclose all conflicts of interest to providers.

204 (b) Where there is a conflict between the pharmacy benefits manager duties owed pursuant
205 to this Code section, the pharmacy benefits manager duty owed to an insured shall be
206 primary over the duty owed to any other party, and the pharmacy benefits manager duty
207 owed to a provider shall be primary over the duty owed to a health plan.

208 (c) A person who is aggrieved by a violation of this Code section may bring a civil action
209 before a state court of competent jurisdiction against a pharmacy benefits manager."

210 **SECTION 4.**

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