

The Senate Committee on Health and Human Services offered the following substitute to HB 323:

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 add a definition; to revise
3 provisions relating to administration of claims by pharmacy benefit managers; to revise
4 provisions relating to prohibited activities of pharmacy benefits managers; to provide for an
5 effective date and applicability; to provide for related matters; to repeal conflicting laws; and
6 for other 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, by adding a new paragraph to read as follows:

12 "(4.1) 'Dispenser' shall have the same meaning as in paragraph (10) of Code Section
13 16-13-21."

14 **SECTION 2.**

15 Said chapter is further amended by revising Code Section 33-64-10, relating to
16 administration of claims by pharmacy benefit manager, as follows:

17 "33-64-10.

18 (a) ~~When administering claims on behalf of group or blanket accident and sickness~~
19 ~~insurers subject to Chapter 30 of this title, a~~ A pharmacy benefits manager shall administer
20 claims in compliance with Code Section 33-30-4.3 and shall not require insureds to use a
21 mail-order pharmaceutical distributor including a mail-order pharmacy.

22 (b) ~~Code Section 33-30-4.3 shall apply to individual accident and sickness policies issued~~
23 ~~pursuant to Chapter 29 of this title and, when administering claims on behalf of individual~~
24 ~~accident and sickness insurers subject to Chapter 29 of this title, a~~ pharmacy benefits
25 ~~manager shall administer claims in compliance with Code Section 33-30-4.3 and shall not~~

26 ~~require insureds to use a mail-order pharmaceutical distributor including a mail-order~~
 27 ~~pharmacy. A pharmacy benefits manager shall report annually to each client, including but~~
 28 ~~not limited to, insurers and payors, the aggregate amount of all rebates that the pharmacy~~
 29 ~~benefits manager received from pharmaceutical manufacturers in connection with claims~~
 30 ~~if administered on behalf of the client and the aggregate amount of such rebates the~~
 31 ~~pharmacy benefits manager received from pharmaceutical manufacturers that it did not~~
 32 ~~pass through to the client.~~

33 (c) This Code section shall not apply to:

- 34 (1) A care management organization, as defined in Chapter 21A of this title;
- 35 (2) The Department of Community Health, as defined in Chapter 2 of Title 31;
- 36 (3) The State Health Benefit Plan under Article 1 of Chapter 18 of Title 45; or
- 37 (4) Any licensed group model health maintenance organization with an exclusive
 38 medical group contract and which operates its own pharmacies licensed under Code
 39 Section 26-4-110.1."

40 SECTION 3.

41 Said chapter is further amended by revising Code Section 33-64-11, relating to prohibited
 42 activities of pharmacy benefits manager, as follows:

43 "33-64-11.

44 (a) A pharmacy benefits manager shall be proscribed from:

- 45 (1) ~~Prohibiting a pharmacist, or pharmacy, or other dispenser or dispenser practice from~~
 46 ~~providing an insured individual information on the amount of the insured's cost share for~~
 47 ~~such insured's prescription drug and the clinical efficacy of a more affordable alternative~~
 48 ~~drug if one is available. Neither a pharmacy nor a pharmacist~~ No pharmacist, pharmacy,
 49 or other dispenser or dispenser practice shall be penalized by a pharmacy benefits
 50 manager for disclosing such information to an insured or for selling to an insured a more
 51 affordable alternative if one is available;
- 52 (2) ~~Prohibiting a pharmacist, or pharmacy, or other dispenser or dispenser practice from~~
 53 ~~offering and providing store direct delivery services to an insured as an ancillary service~~
 54 ~~of the pharmacy or dispenser practice;~~
- 55 (3) ~~Charging or collecting from an insured a copayment that exceeds the total submitted~~
 56 ~~charges by the network pharmacy or other dispenser practice for which the pharmacy or~~
 57 ~~dispenser practice is paid;~~
- 58 (4) ~~Charging or holding a pharmacist or pharmacy or dispenser or dispenser practice~~
 59 ~~responsible for a fee or penalty relating to the adjudication of a claim or an audit~~
 60 ~~conducted pursuant to Code Section 26-4-118, provided that this shall not restrict~~

61 recoupments made in accordance with Code Section 26-4-118 or pay for performance
 62 recoupments otherwise permitted by law;

63 (5) Recouping funds from a pharmacy in connection with claims for which the pharmacy
 64 has already been paid without first complying with the requirements set forth in Code
 65 Section 26-4-118, unless such recoupment is otherwise permitted or required by law; and

66 (6) Penalizing or retaliating against a pharmacist or pharmacy for exercising rights under
 67 this chapter or Code Section 26-4-118;

68 (7) Ordering an insured for the filling of a prescription or the provision of pharmacy care
 69 services to an affiliated pharmacy; offering or implementing plan designs that require
 70 patients to utilize an affiliated pharmacy; or advertising, marketing, or promoting a
 71 pharmacy by an affiliate to patients or prospective patients. Subject to the foregoing, a
 72 pharmacy benefits manager may include an affiliated pharmacy in communications to
 73 patients, including patient and prospective patient specific communications, regarding
 74 network pharmacies and prices, provided that the pharmacy benefits manager includes
 75 information regarding eligible nonaffiliated pharmacies in such communications and the
 76 information provided is accurate. This paragraph shall not be construed to prohibit a
 77 pharmacy benefits manager from entering into an agreement with an affiliated pharmacy
 78 to provide pharmacy care to patients. The restrictions in this paragraph shall not apply
 79 to limited distribution prescription drugs requiring special handling and not commonly
 80 carried at retail pharmacies or oncology clinics or practices;

81 (8) Transferring or sharing records relative to prescription information containing
 82 patient-identifiable and prescriber-identifiable data to an affiliated pharmacy for any
 83 commercial purpose; provided, however, that nothing shall be construed to prohibit the
 84 exchange of prescription information between a pharmacy benefits manager and an
 85 affiliated pharmacy for the limited purposes of pharmacy reimbursement, formulary
 86 compliance, pharmacy care, or utilization review;

87 (9) Knowingly making a misrepresentation to an insured, pharmacist, pharmacy,
 88 dispenser, or dispenser practice; and

89 (10) Taking any action in violation of subparagraphs (a)(21)(D) and (a)(21)(E) of Code
 90 Section 26-4-28.

91 (b) To the extent that any provision of this Code section is inconsistent or conflicts with
 92 applicable federal law, rule, or regulation, such applicable federal law, rule, or regulation
 93 shall apply.

94 (c) This Code section shall not apply to:

- 95 (1) A care management organization, as defined in Chapter 21A of this title;
- 96 (2) The Department of Community Health, as defined in Chapter 2 of Title 31;
- 97 (3) The State Health Benefit Plan under Article 1 of Chapter 18 of Title 45; or

98 (4) Any licensed group model health maintenance organization with an exclusive
99 medical group contract and which operates its own pharmacies licensed under Code
100 Section 26-4-110.1."

101 **SECTION 4.**

102 This Act shall become effective on January 1, 2020, and shall apply to all contracts issued,
103 delivered, or issued for delivery in this state on and after such date.

104 **SECTION 5.**

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