

House Bill 798

By: Representatives Scott of the 153<sup>rd</sup>, Stephens of the 164<sup>th</sup>, Parham of the 141<sup>st</sup>, and Carter of the 159<sup>th</sup>

A BILL TO BE ENTITLED  
AN ACT

1 To amend Chapter 4 of Title 26 of the Official Code of Georgia Annotated, the "Georgia  
2 Pharmacy Practice Act," so as to provide for registration of any person or entity acting as a  
3 pharmacy benefits manager; to provide a short title; to define certain terms; to provide  
4 requirements for registration; to provide for the review of contracts; to provide for a fidelity  
5 bond; to provide that a pharmacy benefits manager shall not intervene in the delivery of  
6 prescriptions; to provide for the dispensing of a substitute prescription drug; to provide that  
7 a pharmacy network provider shall be protected in the event of a dispute with a pharmacy  
8 benefits manager; to provide the duties of a pharmacy benefits manager; to provide for the  
9 dispensation of certain payments; to provide for the protection of certain information; to  
10 provide for audits; to provide for contracts; to provide for notification; to provide for  
11 penalties for violations; to provide for rules and regulations; to provide for related matters;  
12 to repeal conflicting laws; and for other purposes.

13 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

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

15 Chapter 4 of Title 26 of the Official Code of Georgia Annotated, the "Georgia Pharmacy  
16 Practice Act," is amended by adding a new article to read as follows:

17 style="text-align:center">"ARTICLE 12

18 26-4-210.

19 This article shall be known and may be cited as the 'Pharmacy Consumer Protection and  
20 Transparency Act.'

21 26-4-211.

22 As used in this article, the term:

23 (1) 'Commissioner' means the Commissioner of Insurance.

1 (2) 'Covered entity' means a nonprofit hospital or medical service organization, an  
2 insurer, a health coverage plan or health maintenance organization, a health program  
3 administered by the department or this state in the capacity of provider of health  
4 coverage, or an employer, labor union, or other group of persons organized in this state  
5 that provides health coverage to covered individuals who are employed or reside in this  
6 state. Such term shall not include a health plan that provides coverage only for accidental  
7 injury, specified disease, hospital indemnity, medicare supplement, disability income,  
8 long-term care, or other limited benefit health insurance policies and contracts.

9 (3) 'Covered individual' means a dependent or other person provided health coverage  
10 through a policy, contract, or plan for a principal other than himself or herself.

11 (4) 'Covered person' means a member, participant, enrollee, contract holder, policy  
12 holder, or beneficiary of a covered entity who is provided health coverage by the covered  
13 entity.

14 (5) 'Department' means the Department of Insurance.

15 (6) 'Health benefit plan' means a policy, contract, certificate, or agreement offered or  
16 issued by a health carrier to provide, deliver, arrange for, pay for, or reimburse any of the  
17 cost of health care services including prescription drug benefits.

18 (7) 'Pharmacist services' means drug therapy and other patient care services provided by  
19 a licensed pharmacist intended to achieve outcomes related to the cure or prevention of  
20 a disease, elimination or reduction of a patient's symptoms, or the arresting or slowing  
21 of a disease process, all as defined in rules promulgated by the board.

22 (8) 'Pharmacy benefits management' means the administration or management of  
23 prescription drug benefits provided by a covered entity for the benefit of covered  
24 individuals.

25 (9) 'Pharmacy benefits manager' means a person, business, or other entity that performs  
26 pharmacy benefits management. The term includes a person or entity acting for a  
27 pharmacy benefits manager in a contractual or employment relationship in the  
28 performance of pharmacy benefits management for a covered entity.

29 (10) 'Pharmacy network provider' means a pharmacist or pharmacy that has a contractual  
30 relationship with a health benefit plan or pharmacy benefits manager to provide  
31 prescription drugs to covered persons.

32 26-4-212.

33 (a) No person or organization shall act or operate as a pharmacy benefits manager in this  
34 state without a valid certificate of registration issued by the department as provided in this  
35 article. In addition, every pharmacy benefits manager shall comply with the provisions of  
36 Code Section 26-4-110.1.

1 (b) Each person seeking a certificate of registration to act as a pharmacy benefits manager  
2 shall file with the department an application form and include the following information:

3 (1) All basic organizational documents of the pharmacy benefits manager, including,  
4 without limitation, the articles of incorporation, articles of association, bylaws, and other  
5 applicable documents and all amendments to those documents;

6 (2) The names, addresses, official positions, and professional qualifications of the  
7 individuals who are responsible for the conduct of the affairs of the pharmacy benefits  
8 manager, including all members of the board of directors, board of trustees, executive  
9 committee, other governing board or committee, the principal officers in the case of a  
10 corporation, the partners or members in the case of a partnership or association, and any  
11 other person who exercises control or influence over the affairs of the pharmacy benefits  
12 manager;

13 (3) The name and address of the agent for service of process in this state;

14 (4) A detailed description of the claims processing services, pharmacist services,  
15 insurance services, other prescription drug or device services, audit procedures for  
16 network pharmacies, and other administrative services to be provided;

17 (5) Such other information as the Commissioner may require; and

18 (6) A filing fee of \$1,000.00.

19 (c) The applicant shall make available for review by the department copies of all contract  
20 forms used by the pharmacy benefits manager to contract with insurers, pharmaceutical  
21 manufacturers, pharmacies, or other persons utilizing the pharmacy benefits manager for  
22 pharmacy benefits management services.

23 (d) The pharmacy benefits manager's plan of operation shall be consistent with the  
24 provisions of this chapter and rules and regulations promulgated pursuant to this chapter.

25 (e) A pharmacy benefits manager shall maintain a fidelity bond equal to at least 1 percent  
26 of the amount of the funds handled or managed annually by the pharmacy benefits  
27 manager.

28 (f) The pharmacy benefits manager shall renew its registration on an annual basis and the  
29 Commissioner may promulgate rules to set forth the requirements for renewals.

30 26-4-213.

31 (a) A pharmacy benefits manager shall not intervene in the delivery or transmission of  
32 prescriptions from the prescriber to the pharmacist or pharmacy for the purpose of  
33 influencing the prescriber's choice of therapy, influencing the patient's choice of  
34 pharmacist or pharmacy, or altering the prescription information, including, but not limited  
35 to, switching the prescribed drug without the express authorization of the prescriber.

1 (b) With regard to the dispensation of a substitute prescription drug for a prescribed drug  
2 to a covered individual, the following provisions apply:

3 (1) If a pharmacy benefits manager makes a substitution in which the substitute drug  
4 costs more than the prescribed drug, the pharmacy benefits manager shall disclose to the  
5 covered entity and covered person the cost of both drugs and any benefit or payment  
6 directly or indirectly accruing to the pharmacy benefits manager as a result of the  
7 substitution; and

8 (2) The pharmacy benefits manager shall transfer in full to the covered entity any benefit  
9 or payment received in any form by the pharmacy benefits manager either as a result of  
10 a prescription drug substitution under paragraph (1) of this subsection or as a result of the  
11 pharmacy benefits manager's substituting a lower-priced generic and therapeutically  
12 equivalent drug for a higher-priced prescribed drug.

13 (c) A pharmacy network provider may not be terminated or penalized because it expresses  
14 disagreement with the pharmacy benefits manager's decision to deny or limit benefits to  
15 a covered person or because the pharmacy network provider assists a covered person to  
16 seek reconsideration of the pharmacy benefits manager's decision or because the pharmacy  
17 network provider discusses alternative medications with the covered person.

18 26-4-214.

19 (a) A pharmacy benefits manager shall:

20 (1) Owe a fiduciary duty to a covered entity and shall discharge that duty in accordance  
21 with the provisions of state and federal law;

22 (2) Perform its duties with care, skill, prudence, and diligence and in accordance with the  
23 standards of conduct applicable to a fiduciary in an enterprise of a like character and with  
24 like aims;

25 (3) Notify the covered entity in writing of any activity, policy, practice, ownership,  
26 interest, or affiliation of the pharmacy benefits manager that directly or indirectly  
27 presents any conflict of interest;

28 (4) Provide to a covered entity all financial and utilization information requested by the  
29 covered entity relating to the provision of benefits to covered individuals through that  
30 covered entity and all financial and utilization information relating to services to that  
31 covered entity; and

32 (5) Disclose to the covered entity all financial terms and arrangements for remuneration  
33 of any kind that apply between the pharmacy benefits manager and any prescription drug  
34 manufacturer or labeler, including, without limitation, formulary management and  
35 drug-switch programs, educational support, claims processing and pharmacy network  
36 fees that are charged from retail pharmacies, and data sales fees. A pharmacy benefits

1 manager shall disclose to the covered entity whether there is a difference between the  
2 price paid to a retail pharmacy and the amount billed to the covered entity for said  
3 purchase.

4 (b) A pharmacy benefits manager that derives any payment or benefit for the dispensation  
5 of prescription drugs within this state based on volume of sales for certain prescription  
6 drugs or classes or brands of drugs within this state shall pass that payment or benefit on  
7 in full to the covered entity.

8 (c) A pharmacy benefits manager providing information under paragraphs (3) and (4) of  
9 subsection (a) of this Code section may designate that material as confidential. Information  
10 designated confidential by a pharmacy benefits manager and provided to a covered entity  
11 under this article may not be disclosed to any person without the consent of the pharmacy  
12 benefits manager, except that disclosure may be ordered by a court of this state for good  
13 cause shown or made in a court filing under seal. Nothing in this article limits the Attorney  
14 General's use of civil investigative demand authority under Part 2 of Article 15 of Chapter  
15 1 of Title 10, the "Fair Business Practices Act," to investigate violations of this article.

16 (d) A covered entity may audit the pharmacy benefits manager's books and records related  
17 to the rebates or other information provided in this Code section.

18 (e) All contracts for pharmacy benefits management entered into in this state on or after  
19 July 1, 2007, shall comply with the provisions of this article.

20 26-4-215.

21 (a) No pharmacy benefits manager may mandate basic record keeping that is more  
22 stringent than that required by state laws including this chapter or by federal laws or  
23 regulations.

24 (b) No pharmacy network provider may be denied participation in the network of  
25 providers if said provider is willing to accept the terms and conditions offered to all other  
26 providers in the network.

27 (c) After a pharmacy benefits manager affirmatively establishes a payment for a covered  
28 benefit, it may not thereafter retroactively void such established payment and recoup funds  
29 from the pharmacy network provider.

30 (d) When a pharmacy benefits manager receives notice from a covered entity that it is  
31 terminating its contract, the pharmacy benefits manager shall notify within ten business  
32 days all pharmacy network providers of the effective date of said termination.

33 (e) Within 24 hours of a price increase notification by a manufacturer or supplier, the  
34 pharmacy benefits manager shall adjust its payment to the pharmacy network provider  
35 consistent with the price increase.

1 26-4-216.

2 (a) A violation of this article shall be an unfair or deceptive act within the meaning Part  
3 2 of Article 15 of Chapter 1 of Title 10, the "Fair Business Practices Act," and may be  
4 enforced under the provisions of such part.

5 (b) Any covered person or pharmacy network provider who suffers as a result of an act or  
6 practice declared unlawful herein may bring a private right of action individually, but not  
7 in a representative capacity, to recover actual damages under this article.

8 (c) A pharmacy benefits manager who acts without registering as provided in this article  
9 shall, in addition to any other penalty, be subject to a civil fine of not less than \$1,500.00.

10 26-4-217.

11 The Commissioner may promulgate rules and regulations to carry out the provisions of this  
12 article."

13

## **SECTION 2.**

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