

The House Committee on Rules offers the following substitute to SB 109:

A BILL TO BE ENTITLED
AN ACT

1 To amend Title 33 of the Official Code of Georgia Annotated, relating to insurance, so as to
2 provide certain definitions; to include plan administrators in prompt pay requirements; to
3 provide for penalties; to amend Chapter 4 of Title 26 of the Official Code of Georgia
4 Annotated, the "Georgia Pharmacy Practice Act," so as to provide for regulation and
5 licensure of pharmacy benefits managers by the Commissioner of Insurance; to provide for
6 definitions; to provide for license requirements and filing fees; to provide for requirements
7 and procedures affecting pharmacy benefits managers; to provide for related matters; to
8 provide for effective dates; to repeal conflicting laws; and for other purposes.

9 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

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

11 Title 33 of the Official Code of Georgia Annotated, relating to insurance, is amended by
12 revising Code Section 33-23-100, relating to the definition of administrator, as follows:

13 "33-23-100.

14 (a) As used in this article, the term:

15 (1) 'Administrator' means any business entity that, directly or indirectly, collects charges,
16 fees, or premiums; adjusts or settles claims, including investigating or examining claims
17 or receiving, disbursing, handling, or otherwise being responsible for claim funds; ~~and~~
18 or provides underwriting or precertification and preauthorization of hospitalizations or
19 medical treatments for residents of this state for or on behalf of any insurer, including
20 business entities that act on behalf of ~~multiple~~ a single or multiple employer
21 self-insurance health plans, ~~and plan or a self-insured municipalities~~ municipality or other
22 political ~~subdivisions~~ subdivision. Licensure is also required for administrators who act
23 on behalf of self-insured plans providing workers' compensation benefits pursuant to
24 Chapter 9 of Title 34. For purposes of this article, each activity undertaken by the
25 administrator on behalf of an insurer or the client of the administrator is considered a
26 transaction and is subject to the provisions of this title.

1 (2) 'Business entity' means a corporation, association, partnership, sole proprietorship,
2 limited liability company, limited liability partnership, or other legal entity.

3 (3) 'Standard financial quarter' means a three-month period ending on March 31, June
4 30, September 30, or December 31 of any calendar year.

5 (b) Notwithstanding the provisions of subsection (a) of this Code section, the following
6 are exempt from licensure ~~as~~ so long as such entities are acting directly through their
7 officers and employees:

8 (1) An employer on behalf of its employees or the employees of one or more subsidiary
9 or affiliated corporations of such employer;

10 (2) A union on behalf of its members;

11 (3) An insurance company licensed in this state or its affiliate unless the affiliate
12 administrator is placing business with a nonaffiliate insurer not licensed in this state;

13 (4) An insurer which is not authorized to transact insurance in this state if such insurer
14 is administering a policy lawfully issued by it in and pursuant to the laws of a state in
15 which it is authorized to transact insurance;

16 (5) A life or accident and sickness insurance agent or broker licensed in this state whose
17 activities are limited exclusively to the sale of insurance;

18 (6) A creditor on behalf of its debtors with respect to insurance covering a debt between
19 the creditor and its debtors;

20 (7) A trust established in conformity with 29 U.S.C. Section 186 and its trustees, agents,
21 and employees acting thereunder;

22 (8) A trust exempt from taxation under Section 501(a) of the Internal Revenue Code and
23 its trustees and employees acting thereunder or a custodian and its agents and employees
24 acting pursuant to a custodian account which meets the requirements of Section 401(f)
25 of the Internal Revenue Code;

26 (9) A bank, credit union, or other financial institution which is subject to supervision or
27 examination by federal or state banking authorities;

28 (10) A credit card issuing company which advances for and collects premiums or charges
29 from its credit card holders who have authorized it to do so, provided that such company
30 does not adjust or settle claims;

31 (11) A person who adjusts or settles claims in the normal course of his or her practice or
32 employment as an attorney and who does not collect charges or premiums in connection
33 with life or accident and sickness insurance coverage or annuities;

34 ~~(12) A business entity that acts solely as an administrator of one or more bona fide~~
35 ~~employee benefit plans established by an employer or an employee organization, or both,~~
36 ~~for whom the insurance laws of this state are preempted pursuant to the federal Employee~~
37 ~~Retirement Income Security Act of 1974, 29 U.S.C. Section 1001, et seq. An insurance~~

1 company licensed in this state or its affiliate if such insurance company or its affiliate is
 2 solely administering limited benefit insurance. For the purpose of this paragraph, the
 3 term 'limited benefit insurance' means accident or sickness insurance designed,
 4 advertised, and marketed to supplement major medical insurance, specifically: accident
 5 only, CHAMPUS supplement, disability income, fixed indemnity, long-term care, or
 6 specified disease; or

7 (13) An association that administers workers' compensation claims solely on behalf of
 8 its members.

9 (c) A business entity claiming an exemption shall submit an exemption notice on a form
 10 provided by the Commissioner. This form must be signed by an officer of the company
 11 and submitted to the department by December 31 of the year prior to the year for which an
 12 exemption is to be claimed. Such exemption notice shall be updated in writing within 30
 13 days if the basis for such exemption changes. An administrator claiming an exemption
 14 pursuant to paragraphs (3) and (4) of subsection (b) of this Code section shall be subject
 15 to the provisions of Code Sections 33-24-59.5 and 33-24-59.13.

16 (d) Obtaining a license as an administrator does not exempt the applicant from other
 17 licensing requirements under this title.

18 (e) Obtaining a license as an administrator subjects the applicant to the provisions of Code
 19 Sections 33-24-59.5 and 33-24-59.13.

20 (f) An administrator shall be subject to Code Sections 33-24-59.5 and 33-24-59.13 unless
 21 the administrator provides sufficient evidence that the self-insured health plan failed to
 22 properly fund the plan to allow the administrator to pay any outside claim."

23 SECTION 2.

24 Said title is further amended by revising Code Section 33-24-59.5, relating to timely payment
 25 of health benefits, as follows:

26 "33-24-59.5.

27 (a) As used in this Code section, the term:

28 (1) 'Benefits' means the coverages provided by a health benefit plan for financing or
 29 delivery of health care goods or services; but such term does not include capitated
 30 payment arrangements under managed care plans.

31 (2) 'Health benefit plan' means any hospital or medical insurance policy or certificate,
 32 health care plan contract or certificate, qualified higher deductible health plan, health
 33 maintenance organization subscriber contract, any health benefit plan established
 34 pursuant to Article 1 of Chapter 18 of Title 45, or any dental or vision care plan or policy,
 35 or managed care plan or self-insured plan; but health benefit plan does not include

1 policies issued in accordance with Chapter 31 of this title; disability income policies; or
2 Chapter 9 of Title 34, relating to workers' compensation.

3 (3) 'Insurer' means an accident and sickness insurer, fraternal benefit society, nonprofit
4 hospital service corporation, nonprofit medical service corporation, health care
5 corporation, health maintenance organization, provider sponsored health care corporation,
6 or any similar entity and any self-insured health benefit plan ~~not subject to the exclusive~~
7 ~~jurisdiction of the federal Employee Retirement Income Security Act of 1974, 29 U.S.C.~~
8 ~~Section 1001, et seq.~~, which entity provides for the financing or delivery of health care
9 services through a health benefit plan, the plan administrator of any health plan, or the
10 plan administrator of any health benefit plan established pursuant to Article 1 of Chapter
11 18 of Title 45 or any other administrator as defined in paragraph (1) of subsection (a) of
12 Code Section 33-23-100.

13 (b)(1) All benefits under a health benefit plan will be payable by the insurer which is
14 obligated to finance or deliver health care services under that plan upon such insurer's
15 receipt of written or electronic proof of loss or claim for payment for health care goods
16 or services provided. The insurer shall within 15 working days for electronic claims or
17 30 calendar days for paper claims after such receipt mail or send electronically to the
18 insured or other person claiming payments under the plan payment for such benefits or
19 a letter or electronic notice which states the reasons the insurer may have for failing to
20 pay the claim, either in whole or in part, and which also gives the person so notified a
21 written itemization of any documents or other information needed to process the claim
22 or any portions thereof which are not being paid. Where the insurer disputes a portion
23 of the claim, any undisputed portion of the claim shall be paid by the insurer in
24 accordance with this chapter. When all of the listed documents or other information
25 needed to process the claim has been received by the insurer, the insurer shall then have
26 15 working days for electronic claims or 30 calendar days for paper claims within which
27 to process and either mail payment for the claim or a letter or notice denying it, in whole
28 or in part, giving the insured or other person claiming payments under the plan the
29 insurer's reasons for such denial.

30 (2) Receipt of any proof, claim, or documentation by an entity which administrates or
31 processes claims on behalf of an insurer shall be deemed receipt of the same by the
32 insurer for purposes of this Code section.

33 (c) Each insurer shall pay to the insured or other person claiming payments under the
34 health benefit plan interest equal to ~~18~~ 12 percent per annum on the proceeds or benefits
35 due under the terms of such plan for failure to comply with subsection (b) of this Code
36 section.

1 (d) An insurer may only be subject to an administrative penalty by the Commissioner as
 2 authorized by the insurance laws of this state when such insurer processes less than 95
 3 percent of all claims in a standard financial quarter in compliance with paragraph (1) of
 4 subsection (b) of this Code section. Such penalty shall be assessed on data collected by the
 5 Commissioner.

6 (e) This Code section shall be applicable when an insurer is adjudicating claims for its
 7 fully insured business or its business as a third-party administrator."

8 SECTION 3.

9 Said title is further amended in Article 1 of Chapter 24, relating to general provisions
 10 concerning insurance, by adding a new Code section to read as follows:

11 "33-24-59.13.

12 (a) As used in this Code section, the term:

13 (1) 'Benefits' shall have the same meaning as provided in Code Section 33-24-59.5.

14 (2) 'Facility' shall have the same meaning as provided in Code Section 33-20A-3.

15 (3) 'Health benefit plan' shall have the same meaning as provided in Code Section
 16 33-24-59.5.

17 (4) 'Health care provider' shall have the same meaning as provided in Code Section
 18 33-20A-3.

19 (5) 'Insurer' shall have the same meaning as provided in paragraph (3) of Code Section
 20 33-24-59.5.

21 (b)(1) All benefits under a health benefit plan will be payable by the insurer which is
 22 obligated to finance or deliver health care services under that plan upon such insurer's
 23 receipt of written or electronic proof of loss or claim for payment for health care goods
 24 or services provided. The insurer shall within 15 working days for electronic claims or
 25 30 calendar days for paper claims after such receipt mail or send electronically to the
 26 facility or health care provider claiming payments under the plan payment for such
 27 benefits or a letter or notice which states the reasons the insurer may have for failing to
 28 pay the claim, either in whole or in part, and which also gives the facility or health care
 29 provider so notified a written itemization of any documents or other information needed
 30 to process the claim or any portions thereof which are not being paid. Where the insurer
 31 disputes a portion of the claim, any undisputed portion of the claim shall be paid by the
 32 insurer in accordance with this chapter. When all of the listed documents or other
 33 information needed to process the claim has been received by the insurer, the insurer shall
 34 then have 15 working days for electronic claims or 30 calendar days for paper claims
 35 within which to process and either mail payment for the claim or a letter or notice

1 denying it, in whole or in part, giving the facility or health care provider claiming
2 payments under the plan the insurer's reasons for such denial.

3 (2) Receipt of any proof, claim, or documentation by an entity which administers or
4 processes claims on behalf of an insurer shall be deemed receipt of the same by the
5 insurer for purposes of this Code section.

6 (c) Each insurer shall pay to the facility or health care provider claiming payments under
7 the health benefit plan interest equal to 12 percent per annum on the proceeds or benefits
8 due under the terms of such plan for failure to comply with subsection (b) of this Code
9 section.

10 (d) An insurer may only be subject to an administrative penalty by the Commissioner as
11 authorized by the insurance laws of this state when such insurer processes less than 95
12 percent of all claims in a standard financial quarter in compliance with paragraph (1) of
13 subsection (b) of this Code section. Such penalty shall be assessed on data collected by the
14 Commissioner.

15 (e) This Code section shall be applicable when an insurer is adjudicating claims for its
16 fully insured business or its business as a third-party administrator."

17 **SECTION 4.**

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

20 "ARTICLE 13

21 26-4-210.

22 As used in this article, the term:

23 (1) 'Business entity' means a corporation, association, partnership, sole proprietorship,
24 limited liability company, limited liability partnership, or other legal entity.

25 (2) 'Commissioner' means the Commissioner of Insurance.

26 (3) 'Pharmacy benefits manager' means a person, business, or other entity that performs
27 pharmacy benefits management. The term includes a person or entity acting for a
28 pharmacy benefits manager in a contractual or employment relationship in the
29 performance of pharmacy benefits management for a covered entity. This term shall not
30 include a hospital health system operating a formulary process or providing a prescription
31 drug program for the benefit of covered individuals including the hospital health system's
32 employees and their dependents.

1 26-4-211.

2 (a) No business entity shall act as or hold itself out to be a pharmacy benefits manager in
3 this state, other than an applicant licensed in this state for the kinds of business for which
4 it is acting as a pharmacy benefits manager, unless such business entity holds a license as
5 a pharmacy benefits manager issued by the Commissioner. The license shall be renewed
6 on an annual basis and in such manner as the Commissioner may prescribe by rule or
7 regulation. Failure to hold such license shall subject the pharmacy benefits manager to the
8 fines and other appropriate penalties as provided in Chapter 2 of Title 33.

9 (b) An application for a pharmacy benefits manager's license or an application for renewal
10 of such license shall be accompanied by a filing fee to be prescribed by rule or regulation
11 of the Commissioner.

12 (c) A license may be refused or a license duly issued may be suspended or revoked or the
13 renewal of such license refused by the Commissioner if the Commissioner finds that the
14 applicant for or holder of the license:

15 (1) Has intentionally misrepresented or concealed any material fact in the application for
16 the license;

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

19 (3) Has misappropriated, converted to his or her own use, or illegally withheld money
20 belonging to an insurer or an insured or beneficiary;

21 (4) Has committed fraudulent practices;

22 (5) Has materially misrepresented the terms and conditions of insurance policies or
23 contracts;

24 (6) Has failed to comply with or has violated any proper order, rule, or regulation issued
25 by the Commissioner;

26 (7) Is not in good faith carrying on business as a pharmacy benefits manager;

27 (8) Has failed to obtain for initial licensure or retain for annual renewal an adequate net
28 worth as prescribed by order, rule, or regulation of the Commissioner; or

29 (9) Has shown lack of trustworthiness or lack of competence to act as a pharmacy
30 benefits manager.

31 (d) If the Commissioner moves to suspend, revoke, or nonrenew a license for a pharmacy
32 benefits manager, the Commissioner shall provide notice of that action to the pharmacy
33 benefits manager and the pharmacy benefits manager may invoke the right to an
34 administrative hearing in accordance with Chapter 2 of Title 33.

35 (e) No licensee whose license has been revoked as prescribed under this Code section shall
36 be entitled to file another application for a license within five years from the effective date
37 of the revocation or, if judicial review of such revocation is sought, within five years from

1 the date of final court order or decree affirming the revocation. The application when filed
2 may be refused by the Commissioner unless the applicant shows good cause why the
3 revocation of its license shall not be deemed a bar to the issuance of a new license.

4 (f) Appeal from any order or decision of the Commissioner made pursuant to this article
5 shall be taken as provided in Chapter 2 of Title 33.

6 (g)(1) The Commissioner shall have the authority to issue a probationary license to any
7 applicant under this article.

8 (2) A probationary license may be issued for a period of not less than three months and
9 not longer than 12 months and shall be subject to immediate revocation for cause at any
10 time with a hearing.

11 (3) The Commissioner, at his or her discretion, shall prescribe the terms of probation,
12 may extend the probationary period, or refuse to grant a license at the end of any
13 probationary period.

14 (h) A pharmacy benefits manager's license may not be sold or transferred to a
15 nonaffiliated or otherwise unrelated party. A pharmacy benefits manager may not contract
16 or subcontract any of its negotiated services to any unlicensed business entity unless a
17 special authorization is approved by the Commissioner prior to entering into a contracted
18 or subcontracted arrangement.

19 (i) The Commissioner may, at his or her discretion, assess a fine of \$1,000.00 against any
20 business entity acting as a pharmacy benefits manager without a license for each
21 transaction in violation of this chapter.

22 (j) A licensed pharmacy benefits manager is not permitted to market or administer any
23 insurance product not approved in Georgia or that is issued by a nonadmitted insurer or
24 unauthorized multiple employer self-insured health plan."

25 **SECTION 5.**

26 Sections 1, 2, and 3 of this Act shall become effective on January 1, 2009. All other sections
27 shall become effective on July 1, 2008.

28 **SECTION 6.**

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