

Senate Bill 310

By: Senators Hawkins of the 49th, Murphy of the 27th, Goggans of the 7th, Williams of the 19th, Carter of the 1st and others

AS PASSED SENATE

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 for regulation and licensure of pharmacy benefits managers by the Commissioner
3 of Insurance; to provide for definitions; to provide for license requirements and filing fees;
4 to provide for requirements and procedures affecting pharmacy benefits managers; to require
5 a surety bond; to provide that a pharmacy benefits manager shall not engage in the practice
6 of medicine; to make certain audit requirements applicable to pharmacy benefits managers;
7 to provide that a pharmacy benefits manager shall not have to be licensed as an
8 administrator; to provide for related matters; to provide for an effective date; to repeal
9 conflicting laws; and for other purposes.

10 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

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

12 Title 33 of the Official Code of Georgia Annotated, relating to insurance, is amended by
13 adding a new chapter to read as follows:

14 style="text-align:center">"CHAPTER 64

15 33-64-1.

16 As used in this chapter, the term:

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

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

20 (3) 'Covered entity' means an employer, labor union, or other group of persons organized
21 in this state that provides health coverage to covered individuals who are employed or
22 reside in this state.

23 (4) 'Covered individual' means a member, participant, enrollee, contract holder, policy
 24 holder, or beneficiary of a covered entity who is provided health coverage by a covered
 25 entity.

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

28 (6) 'Pharmacy benefits management' means the service provided to a health plan or
 29 covered entity, directly or through another entity, including the procurement of
 30 prescription drugs to be dispensed to patients, or the administration or management of
 31 prescription drug benefits, including, but not limited to, any of the following:

32 (A) Mail service pharmacy;

33 (B) Claims processing, retail network management, or payment of claims to
 34 pharmacies for dispensing prescription drugs;

35 (C) Clinical or other formulary or preferred drug list development or management;

36 (D) Negotiation or administration of rebates, discounts, payment differentials, or other
 37 incentives for the inclusion of particular prescription drugs in a particular category or
 38 to promote the purchase of particular prescription drugs;

39 (E) Patient compliance, therapeutic intervention, or generic substitution programs; and

40 (F) Disease management.

41 (7) 'Pharmacy benefits manager' means a person, business entity, or other entity that
 42 performs pharmacy benefits management. The term includes a person or entity acting for
 43 a pharmacy benefits manager in a contractual or employment relationship in the
 44 performance of pharmacy benefits management for a covered entity. The term does not
 45 include services provided by pharmacies operating under a hospital pharmacy license.
 46 The term also does not include health systems while providing pharmacy services for
 47 their patients, employees, or beneficiaries, for indigent care, or for the provision of drugs
 48 for outpatient procedures.

49 33-64-2.

50 (a) No person, business entity, or other entity shall act as or hold itself out to be a
 51 pharmacy benefits manager in this state, other than an applicant licensed in this state for
 52 the kinds of business for which it is acting as a pharmacy benefits manager, unless such
 53 person, business entity, or other entity holds a license as a pharmacy benefits manager
 54 issued by the Commissioner pursuant to this chapter. The license shall be renewable on
 55 an annual basis. Failure to hold such license shall subject such person, business entity, or
 56 other entity to the fines and other appropriate penalties as provided in Chapter 2 of this
 57 title.

58 (b) An application for a pharmacy benefits manager's license or an application for renewal
59 of such license shall be accompanied by a filing fee of \$500.00 for an initial license and
60 \$400.00 for renewal.

61 (c) A license shall be issued or renewed and shall not be suspended or revoked by the
62 Commissioner unless the Commissioner finds that the applicant for or holder of the license:

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

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

67 (3) Has committed fraud; or

68 (4) Has failed to obtain for initial licensure or retain for annual licensure renewal a net
69 worth of at least \$200,000.00.

70 (d) If the Commissioner moves to suspend, revoke, or nonrenew a license for a pharmacy
71 benefits manager, the Commissioner shall provide notice of that action to the pharmacy
72 benefits manager, and the pharmacy benefits manager may invoke the right to an
73 administrative hearing in accordance with Chapter 2 of this title.

74 (e) No licensee whose license has been revoked as prescribed under this Code section shall
75 be entitled to file another application for a license within five years from the effective date
76 of the revocation or, if judicial review of such revocation is sought, within five years from
77 the date of final court order or decree affirming the revocation. The application when filed
78 may be refused by the Commissioner unless the applicant shows good cause why the
79 revocation of its license shall not be deemed a bar to the issuance of a new license.

80 (f) Appeal from any order or decision of the Commissioner made pursuant to this chapter
81 shall be taken as provided in Chapter 2 of this title.

82 (g)(1) The Commissioner shall have the authority to issue a probationary license to any
83 applicant under this title.

84 (2) A probationary license may be issued for a period of not less than three months and
85 not longer than 12 months and shall be subject to immediate revocation for cause at any
86 time without a hearing.

87 (3) The Commissioner shall prescribe the terms of probation, may extend the
88 probationary period, or refuse to grant a license at the end of any probationary period in
89 accordance with rules and regulations.

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

95 (i) In addition to all other penalties provided for under this title, the Commissioner shall
96 have the authority to assess a monetary penalty against any person, business entity, or other
97 entity acting as a pharmacy benefits manager without a license of up to \$1,000.00 for each
98 transaction in violation of this chapter, unless such person, business entity, or other entity
99 knew or reasonably should have known it was in violation of this chapter, in which case
100 the monetary penalty provided for in this subsection may be increased to an amount of up
101 to \$5,000.00 for each and every act in violation.

102 (j) A licensed pharmacy benefits manager shall not market or administer any insurance
103 product not approved in Georgia or that is issued by a nonadmitted insurer or unauthorized
104 multiple employer self-insured health plan.

105 (k) In addition to all other penalties provided for under this title, the Commissioner shall
106 have the authority to place any pharmacy benefits manager on probation for a period of
107 time not to exceed one year for each and every act in violation of this chapter and may
108 subject such pharmacy benefits manager to a monetary penalty of up to \$1,000.00 for each
109 and every act in violation of this chapter, unless the pharmacy benefits manager knew or
110 reasonably should have known he or she was in violation of this chapter, in which case the
111 monetary penalty provided for in this subsection may be increased to an amount of up to
112 \$5,000.00 for each and every act in violation.

113 (l) A pharmacy benefits manager operating as a line of business or affiliate of a health
114 insurer, health care center, hospital service corporation, medical service corporation, or
115 fraternal benefit society licensed in this state or of any affiliate of such health insurer,
116 health care center, hospital service corporation, medical service corporation, or fraternal
117 benefit society shall not be required to obtain a license pursuant to this chapter. Such
118 health insurer, health care center, hospital service corporation, medical service corporation,
119 or fraternal benefit society shall notify the Commissioner annually, in writing, on a form
120 provided by the Commissioner, that it is affiliated with or operating as a line of business
121 as a pharmacy benefits manager.

122 33-64-3.

123 (a) Every applicant for a pharmacy benefits manager's license shall file with the
124 application and shall thereafter maintain in force a bond in the amount of \$100,000.00 in
125 favor of the Commissioner executed by a corporate surety insurer authorized to transact
126 insurance in this state. The terms and type of the bond shall be established by rules and
127 regulations.

128 (b) The bond shall remain in force until the surety is released from liability by the
129 Commissioner or until the bond is canceled by the surety. Without prejudice to any

130 liability accrued prior to cancellation, the surety may cancel the bond upon 30 days'
131 advance notice, in writing, filed with the Commissioner.

132 (c) Every applicant for a pharmacy benefits manager's license shall obtain and shall
133 thereafter maintain in force errors and omissions coverage or other appropriate liability
134 insurance, written by an insurer authorized to transact insurance in this state, in an amount
135 of at least \$250,000.00.

136 (d) The coverage required in subsection (c) of this Code section shall remain in force for
137 a term of at least one year and shall contain language that includes that the insurer may
138 cancel the insurance upon 60 days' advance notice filed with the Commissioner. Other
139 terms and conditions relating to the errors and omissions policy may be imposed on the
140 applicant in accordance with rules and regulations.

141 (e) In the event a licensed pharmacy benefits manager fails to renew, surrenders, or
142 otherwise terminates its license, it must retain both the bond and the errors and omissions
143 coverage for a period of not less than one year after the licensee has failed to renew,
144 surrendered, or otherwise terminated the license.

145 33-64-4.

146 No pharmacy benefits manager shall engage in the practice of medicine.

147 33-64-5.

148 Pharmacy benefits managers, whether licensed pursuant to this chapter or exempt from
149 licensure pursuant to subsection (l) of Code Section 33-64-2, shall be subject to Code
150 Section 26-4-118, 'The Pharmacy Audit Bill of Rights,' to the same extent and in the same
151 manner as pharmacies.

152 33-64-6.

153 A pharmacy benefits manager licensed pursuant to this chapter shall not be required to
154 obtain a license as an administrator pursuant to Article 2 of Chapter 23 of Title 33 to
155 perform any function as a pharmacy benefits manager pursuant to this chapter.

156 33-64-7.

157 The Commissioner may not enlarge upon or extend the provisions of this chapter through
158 any act, rule, or regulation."

159 **SECTION 2.**

160 This Act shall become effective on January 15, 2011.

161

SECTION 3.

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