

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**

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 regulation and licensure of multiple employer self-insured  
9 health plans by the Commissioner of Insurance; to change certain license requirements; to  
10 remove certain aggregate excess stop-loss and individual excess stop-loss coverage  
11 requirements; to change certain reporting requirements; to provide for a minimum loss ratio  
12 percentage and standards; to provide for application requirements; to provide for  
13 applicability of insurance laws; to provide for related matters; to provide for an effective  
14 date; to repeal conflicting laws; and for other purposes.

15 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

16 **SECTION 1.**

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

19 "CHAPTER 64

20 33-64-1.

21 As used in this chapter, the term:

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

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

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

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

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

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

37 (A) Mail service pharmacy;

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

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

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

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

45 (F) Disease management.

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

54 33-64-2.

55 (a) No person, business entity, or other entity shall act as or hold itself out to be a  
 56 pharmacy benefits manager in this state, other than an applicant licensed in this state for  
 57 the kinds of business for which it is acting as a pharmacy benefits manager, unless such  
 58 person, business entity, or other entity holds a license as a pharmacy benefits manager  
 59 issued by the Commissioner pursuant to this chapter. The license shall be renewable on  
 60 an annual basis. Failure to hold such license shall subject such person, business entity, or

61 other entity to the fines and other appropriate penalties as provided in Chapter 2 of this  
62 title.

63 (b) An application for a pharmacy benefits manager's license or an application for renewal  
64 of such license shall be accompanied by a filing fee of \$500.00 for an initial license and  
65 \$400.00 for renewal.

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

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

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

72 (3) Has committed fraud; or

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

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

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

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

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

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

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

95 (h) A pharmacy benefits manager's license may not be sold or transferred to a nonaffiliated  
96 or otherwise unrelated party. A pharmacy benefits manager may not contract or  
97 subcontract any of its negotiated formulary services to any unlicensed nonaffiliated

98 business entity unless a special authorization is approved by the Commissioner prior to  
99 entering into a contracted or subcontracted arrangement.

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

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

110 (k) In addition to all other penalties provided for under this title, the Commissioner shall  
111 have the authority to place any pharmacy benefits manager on probation for a period of  
112 time not to exceed one year for each and every act in violation of this chapter and may  
113 subject such pharmacy benefits manager to a monetary penalty of up to \$1,000.00 for each  
114 and every act in violation of this chapter, unless the pharmacy benefits manager knew or  
115 reasonably should have known he or she was in violation of this chapter, in which case the  
116 monetary penalty provided for in this subsection may be increased to an amount of up to  
117 \$5,000.00 for each and every act in violation.

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

127 33-64-3.

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

133 (b) The bond shall remain in force until the surety is released from liability by the  
134 Commissioner or until the bond is canceled by the surety. Without prejudice to any  
135 liability accrued prior to cancellation, the surety may cancel the bond upon 30 days'  
136 advance notice, in writing, filed with the Commissioner.

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

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

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

150 33-64-4.

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

152 33-64-5.

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

157 33-64-6.

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

161 33-64-7.

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

164 **SECTION 2.**

165 Said title is further amended by revising Code Section 33-50-3, relating to the application for  
 166 license for any multiple employer self-insured health plan, as follows:

167 "33-50-3.

168 (a) Application for a license ~~must~~ shall be made on forms prescribed by the Commissioner.  
 169 ~~No multiple employer self-insured health plan may be licensed unless it has and maintains~~  
 170 ~~a minimum of 250 covered employees.~~

171 (b) Every multiple employer self-insured health plan shall pay to the Commissioner annual  
 172 license fees, as established by rule or regulation of the Commissioner.

173 (c) Every multiple employer self-insured health plan shall pay to the Commissioner the  
 174 premium taxes ~~required for insurance companies as set forth in Chapter 8 of this title on~~  
 175 the plan's net retained premium after deducting premium paid by the plan to its excess  
 176 insurer and any other applicable deductions provided for in Chapter 8 of Title 33. The  
 177 applicable premium tax rate shall be the applicable rates for insurance companies provided  
 178 for in Chapter 8 of Title 33.

179 ~~(d) The Commissioner shall establish, by rule or regulation, security deposits for multiple~~  
 180 ~~employer self-insured health plans."~~

181 **SECTION 3.**

182 Said title is further amended by revising Code Section 33-50-5, relating to aggregate excess  
 183 stop-loss coverage and individual excess stop-loss coverage, as follows:

184 "33-50-5.

185 ~~A multiple employer self-insured health plan shall include aggregate excess stop-loss~~  
 186 ~~coverage and individual excess stop-loss coverage provided by an insurer licensed by the~~  
 187 ~~state. Aggregate excess stop-loss coverage shall include provisions to cover incurred,~~  
 188 ~~unpaid claim liability in the event of plan termination. The excess or stop-loss insurer shall~~  
 189 ~~bear the risk of coverage for any member of the pool that becomes insolvent with~~  
 190 ~~outstanding contributions due. In addition, the plan shall have a participating employer's~~  
 191 ~~fund in an amount at least equal to the point at which the excess or stop-loss insurer shall~~  
 192 ~~assume 100 percent of additional liability. A plan shall submit its proposed excess or~~  
 193 ~~stop-loss insurance contract to the Commissioner at least 30 days prior to the proposed~~  
 194 ~~plan's effective date and at least 30 days subsequent to any renewal date. The~~  
 195 ~~Commissioner shall review the contract to determine whether it meets the standards~~  
 196 ~~established by this chapter and respond within a 30 day period. Any excess or stop-loss~~  
 197 ~~insurance plan cannot be canceled without 90 days' notice to the insured and the~~  
 198 ~~Commissioner.~~

- 199 (a) No multiple employer self-insured health plan shall be licensed unless it shall possess  
200 and thereafter maintain a minimum surplus of at least \$200,000.00.
- 201 (b) A multiple employer self-insured health plan shall be subject to and comply with the  
202 applicable regulatory action level risk-based capital requirements prescribed by Chapter  
203 56 of this title.
- 204 (c) Every multiple employer self-insured health plan shall maintain a security deposit with  
205 the Commissioner. The amount of the deposit shall be \$100,000.00 and shall be in the  
206 form of securities eligible for the investment of capital funds of domestic insurers. The  
207 deposit shall be administered in accordance with the provisions of Chapter 12 of this title.
- 208 (d) Every multiple employer self-insured health plan shall annually obtain an opinion from  
209 a qualified actuary as to the adequacy of its loss reserves. Such opinion shall be prepared  
210 and issued based on standards adopted from time to time by the Actuarial Standards Board  
211 and in accordance with instruction prescribed by the National Association of Insurance  
212 Commissioners.
- 213 (e) Every multiple employer self-insured health plan licensed pursuant to this chapter shall  
214 have an annual audit by an independent certified public accountant in accordance with  
215 Georgia Insurance Department Regulation 120-2-60 and instructions prescribed by the  
216 National Association of Insurance Commissioners.
- 217 (f) Every multiple employer self-insured health plan shall file financial statements with the  
218 Commissioner in accordance with the provisions of Georgia Insurance Department  
219 Regulation 120-2-18-.06.
- 220 (g) Every multiple employer self-insured health plan shall obtain and thereafter maintain  
221 aggregate excess stop-loss coverage and individual excess stop-loss coverage.
- 222 (1) Excess stop-loss coverage required by this Code section shall be issued by an insurer  
223 licensed by the state.
- 224 (2) The retention limits for both the aggregate excess stop-loss coverage and individual  
225 excess stop-loss coverage shall be determined annually by a qualified actuary based on  
226 sound actuarial principles.
- 227 (3) Any stop-loss contract maintained pursuant to this Code section shall contain a  
228 provision that the stop-loss insurer shall give the multiple employer self-insured health  
229 plan and the Commissioner a minimum of 180 days' notice of cancellation or nonrenewal.
- 230 (4) If the multiple employer self-insured health plan fails to obtain replacement coverage  
231 within 90 days after receipt of the notice of cancellation or nonrenewal, the trustees of the  
232 plan shall provide for the orderly liquidation of the multiple employer self-insured health  
233 plan.

234 (h) Each participating employer shall be jointly and severally liable for all legal  
 235 obligations of the multiple employer self-insured health plans created on or after July 1,  
 236 2010.

237 (1) If the assets of the multiple employer self-insured health plan are at any time  
 238 insufficient to enable the plan to discharge its legal liabilities and other obligations and  
 239 to maintain the surplus required under this Code section, it shall forthwith make up the  
 240 deficiency or levy an assessment upon its participating employers for the amount needed  
 241 to make up the deficiency.

242 (2) If the multiple employer self-insured health plan fails to make up the deficiency or  
 243 make the required assessment within 30 days after the Commissioner orders it to do so  
 244 or if the deficiency is not fully made up within 60 days after the date on which any such  
 245 assessment is made or within such longer period as may be specified by the  
 246 Commissioner, the plan shall be deemed to be insolvent.

247 (3) If the liquidation of a multiple employer self-insured health plan is ordered, an  
 248 assessment shall be levied upon its participating employers for such an amount as the  
 249 Commissioner determines to be necessary to discharge all liabilities of the plan, including  
 250 the reasonable costs of liquidation.

251 (i) A multiple employer self-insured health plan licensed before January 1, 2010, shall  
 252 have until December 31, 2011, to comply with the provisions of this Code section."

253 **SECTION 4.**

254 Said title is further amended by revising Code Section 33-50-6, relating to requirements for  
 255 holding of funds collected, as follows:

256 "33-50-6.

257 Funds collected from the participating employers under multiple employer self-insured  
 258 health plans ~~must~~ shall be held in trust subject to the following requirements:

259 (1) A board of trustees elected by participating employers ~~must~~ shall serve as fund  
 260 managers on behalf of participants. Trustees ~~must~~ shall be plan participants or be an  
 261 employee or owner of a participating employer or an employee of a sponsoring  
 262 association. No participating employer ~~may~~ shall be represented by more than one  
 263 trustee. A minimum of three and a maximum of seven trustees may be elected. Trustees  
 264 ~~may~~ shall not receive remuneration but they may be reimbursed for actual and reasonable  
 265 expenses incurred in connection with duties as trustee;

266 (2) Trustees ~~must~~ shall be bonded in an amount not less than \$150,000.00 from a  
 267 licensed surety company or covered under a directors and officers liability policy issued  
 268 to the multiple employer self-insured health plan;

269 (3) Investment of plan funds is shall be subject to the same restrictions which are  
 270 applicable to insurers as provided in Chapter 11 of this title; and  
 271 ~~(4) Trustees, on behalf of the plan, shall file an annual report with the Commissioner by~~  
 272 ~~March 1 showing the condition and affairs of the plan as of the preceding December 31.~~  
 273 ~~The report must be made on forms prescribed by the Commissioner. The report shall~~  
 274 ~~summarize the financial condition of the fund, itemize collections from participating~~  
 275 ~~employers, detail all fund expenditures, and provide any additional information which the~~  
 276 ~~Commissioner requires. A multiple employer self-insured health plan shall maintain a~~  
 277 ~~minimum loss ratio of at least 70 percent. Compliance with such minimum loss ratio~~  
 278 ~~standard shall be evaluated annually by a multiple employer self-insured health plan.~~  
 279 ~~Failure to comply with minimum loss ratio standards shall result in a premium refund to~~  
 280 ~~participating employers.~~"

## 281 SECTION 5.

282 Said title is further amended by revising Code Section 33-50-7, relating to loss reserves for  
 283 incurred losses and surplus account, as follows:

284 "33-50-7.

285 ~~(a) A plan shall establish loss reserves for all incurred losses, both reported and~~  
 286 ~~unreported, for expenses and for unearned premiums in a manner and amount established~~  
 287 ~~by the Commissioner by rule or regulation.~~

288 ~~(b) A plan also shall establish a surplus account equal to the greater of:~~

289 ~~(1) Three times the average paid monthly premium during the plan's most recent fund~~  
 290 ~~year;~~

291 ~~(2) For plans which do not yet have one fund year's experience, three times the estimated~~  
 292 ~~monthly premium; or~~

293 ~~(3) One hundred thousand dollars.~~

294 Every application for benefits and every benefit plan issued by a multiple employer  
 295 self-insured health plan shall contain in contrasting color, in not less than ten-point type,  
 296 the following statements:

297 (1) The plan is a self-insured plan, and benefits are not guaranteed by a licensed insurer;

298 (2) The plan is not covered by the Georgia Life and Health Guaranty Association;

299 (3) This is a fully assessable benefit plan. In the event that the multiple employer  
 300 self-insured health plan is unable to pay its obligations, participating employers shall be  
 301 required to contribute on a joint and several basis the funds necessary to meet any unpaid  
 302 obligations; and

303 (4) Certain other major protections offered to Georgia residents under the Georgia  
 304 Insurance Code and Rules and Regulations, such as conversion rights and certain

305 mandated or required benefits, may not be available through the multiple employer  
306 self-insured plan."

307 **SECTION 6.**

308 Said title is further amended by adding a new Code section to read as follows:

309 "33-50-14.

310 A multiple employer self-insured health plan, which covers lives in other states, may cover  
311 lives in this state only if the Commissioner deems the plan to be in compliance with the  
312 requirements of this chapter."

313 **SECTION 7.**

314 Section 1 of this Act shall become effective on January 15, 2011. All other sections of this  
315 Act shall become effective on July 1, 2010.

316 **SECTION 8.**

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