

Senate Bill 3

By: Senators Murphy of the 27th, Hawkins of the 49th, Williams of the 19th, Thomas of the 54th, Harbison of the 15th and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Article 1 of Chapter 24 of Title 33 of the Official Code of Georgia Annotated,
2 relating to general provisions relative to insurance, so as to provide for legislative intent; to
3 provide for prior authorization requirements for a prescription drug; to provide for
4 definitions; to provide for penalties; to provide for discounts; to provide for the
5 Commissioner of Insurance to establish oversight of the operation of pharmacy benefits
6 managers; to amend Title 49 of the Official Code of Georgia Annotated, relating to social
7 services, so as to require the Department of Community Health to modify the state plan to
8 require that in certain circumstances only generic drugs shall be distributed to recipients of
9 drugs under the state plan; to require prescription drug programs under the PeachCare for
10 Kids Program to distribute generic drugs when appropriate; to provide for related matters;
11 to repeal conflicting laws; and for other purposes.

12 **BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:**

13 **SECTION 1.**

14 (a) The General Assembly finds and declares that it is a vital government concern that the
15 citizens of the State of Georgia have access to the appropriate prescription drugs in the
16 most effective and timely fashion, as the health care market becomes increasingly
17 dominated by health care plans using cost savings techniques that include drug prior
18 authorization programs that decide which drugs patients may or may not be prescribed
19 despite their health care professional's prescription. The General Assembly also finds and
20 declares that it is a vital government function to protect patients from drug prior
21 authorization practices which have the effect of denying or limiting appropriate drugs.

22 (b) To achieve these ends, the General Assembly declares it necessary to provide for
23 restrictions of cost shifting to physicians and patients the costs associated to these parties
24 in time and money to comply with these programs, as well as protecting the lives of the
25 patients adversely affected by requirements to fail on a series of drugs or change from a
26 drug that has proven effective simply to comply with their plan's or provider's preferred
27 drug list.

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SECTION 2.

Article 1 of Chapter 24 of Title 33 of the Official Code of Georgia Annotated, relating to general provisions relative to insurance, is amended by adding a new Code section to read as follows:

"33-24-59.13.

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

(1) 'Covered entity' means a nonprofit hospital or medical service organization, an insurer, a health coverage plan or health maintenance organization, a health program administered by the department or this state in the capacity of provider of health coverage, or an employer, labor union, or other group of persons organized in this state that provides health coverage to covered individuals who are employed or reside in this state.

(2) 'Health benefit plan or policy' means any individual or group plan, policy, or contract for health care services issued, delivered, issued for delivery, or renewed in this state, including, but not limited to, a health care corporation, health maintenance organization, preferred provider organization, accident and sickness insurer, fraternal benefit society, hospital service corporation, medical service corporation, workers' compensation insurance carrier in accordance with Chapter 9 of Title 34, other insurer or similar entity, and the state health benefit plan under Article 1 of Chapter 18 of Title 45 but shall not mean the medical assistance program administered under Article 7 of Chapter 4 of Title 49 and the PeachCare for Kids Program under Article 13 of Chapter 5 of Title 49.

(3) 'Insurer' means a health care corporation, health maintenance organization, preferred provider organization, accident and sickness insurer, fraternal benefit society, hospital service corporation, medical service corporation, workers' compensation insurance carrier in accordance with Chapter 9 of Title 34, managed care plan other than a dental plan, or any similar entity authorized to issue contracts under Title 33 and shall also include the state for purposes of the state health benefit plan under Article 1 of Chapter 18 of Title 45 but shall not mean the medical assistance program administered under Article 7 of Chapter 4 of Title 49 and the PeachCare for Kids Program under Article 13 of Chapter 5 of Title 49.

(4) 'Pharmacy benefits manager' means any person, corporation, or other entity that administers the prescription drug, prescription device, or both prescription drug and device portion of a health benefit plan on behalf of an insurer. The term includes a person or entity acting for a pharmacy benefits manager in a contractual or employment relationship in the performance of pharmacy benefits management for a covered entity.

(5) 'Prescription drug' has the meaning provided by Code Section 26-4-5.

64 (b) Insurers shall establish procedures to ensure there is a response to a request for prior
65 authorization for a prescription drug by telephone or other telecommunication device
66 within 24 hours after receipt of such a request. In the event the authorization is not
67 received within 24 hours as required in this subsection, or in an emergency, a 72 hour
68 supply of the drug prescribed shall be provided.

69 (c) Insurers shall utilize a step-therapy prior authorization approval process for
70 medications excluded from such insurers' preferred drug lists. The process may require
71 that one medication from the same class and listed on the preferred drug list be used within
72 the previous 12 months prior to a patient moving to an alternative medication not listed on
73 such preferred drug list. Authorization for the use of a nonpreferred drug shall be for no
74 less than a 12 month period. The trial period between the specified steps may vary
75 according to the medical indication.

76 (d) A physician shall be reimbursed by the insurer or the pharmacy benefits manager when
77 prior approvals for that insurer or pharmacy benefits manager exceed 10 in a 30 day period
78 at the rate of \$10.00 per prior approval.

79 (e) In the event a patient is required to incur additional visits to the pharmacy as a result
80 of the prior approval process, the insurer or pharmacy benefits management company shall
81 provide the patient a 12 percent decrease in the charge for the prescription drug.

82 (f) A patient who has received a nonpreferred drug shall be permitted to continue using the
83 drug if the drug has been removed from the preferred drug list or if the patient has changed
84 to a plan or provider that does not list the drug on such plan's or provider's preferred drug
85 list.

86 (g) In the event the health benefit plan or policy or pharmacy benefits manager requires
87 a different drug than that prescribed by the patient's physician, the health benefit plan or
88 policy or pharmacy benefits manager managing the prescription benefits of the patient is
89 liable for any adverse consequences of such drug."

90 **SECTION 3.**

91 Said article is further amended by adding a new Code section to read as follows:

92 "33-24-59.14.

93 There shall be established by the Commissioner within the department an oversight
94 committee. The purpose of this committee shall be to advise the legislature on the conduct
95 of pharmacy benefits managers operating in this state. This conduct shall include, but not
96 be limited to, business practices involving drug prior authorization programs, rebate
97 programs, the evolving certification process, and any regulations of the industry by other
98 states. The Commissioner may not enlarge upon or extend the provisions of this Code
99 section through any act, rule, or regulation."

100 **SECTION 4.**

101 Title 49 of the Official Code of Georgia Annotated, relating to social services, is amended
102 in Article 7 of Chapter 4, relating to medical assistance generally, by adding a new
103 subsection to Code Section 49-4-142, relating to adoption, administration, and modification
104 of the state plan, to read as follows:

105 "(d) The department shall implement a modification of the state plan for medical assistance
106 or any affected rules and regulations of the department, which modification shall require
107 that any program administering the distribution of prescription drugs to a recipient of
108 medical assistance shall distribute generic drugs when available or appropriate in
109 accordance with department guidelines. The modification to the plan or to any affected
110 rules and regulations shall be effective unless and until federal authorities rule that such
111 modification is out of compliance with federal regulations. Nothing in this subsection
112 shall be interpreted to preempt the authority of a practitioner of the healing arts to require
113 a brand drug pursuant to Code Section 26-4-81."

114 **SECTION 5.**

115 Said title is further amended in Article 13 of Chapter 5, relating to PeachCare for Kids, by
116 adding a new Code section to read as follows:

117 "49-5-274.
118 Any prescription drug program administered under PeachCare distributing prescription
119 drugs to recipients of the program shall require the distribution of generic drugs when
120 available or appropriate in accordance with department guidelines. The department is
121 authorized to modify the plan required pursuant to subsection (i) of Code Section 49-5-273
122 as is necessary to implement this Code section. The modification of such plan and the
123 requirements of this Code section shall be effective unless and until federal authorities rule
124 that such modification is out of compliance with federal regulations. Nothing in this Code
125 section shall be interpreted to preempt the authority of a practitioner of the healing arts to
126 require a brand drug pursuant to Code Section 26-4-81."

127 **SECTION 6.**

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