

Senate Bill 123

By: Senators Hawkins of the 49th, Murphy of the 27th, Hudgens of the 47th, Thomas of the 54th, Williams of the 19th 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 related matters; to repeal conflicting laws; and for other
 9 purposes.

10 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

11 **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 "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 (4.1) '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 (5) '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 (6) 'Pharmacy benefits manager' means a person, business, or other entity that performs
 42 pharmacy benefits management for a health plan or covered entity. The term includes
 43 a person or entity acting for a pharmacy benefits manager in a contractual or employment
 44 relationship in the performance of pharmacy benefits management for a covered entity.
 45 The term does not include services provided by pharmacies operating under a hospital
 46 pharmacy license. The term also does not include health systems while providing
 47 pharmacy services for their patients, employees, or beneficiaries, for indigent care, or for
 48 the provision of drugs for outpatient procedures.

49 33-64-2.

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

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

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

- 61 (1) Has intentionally misrepresented or concealed any material fact in the application for
62 the license;
- 63 (2) Has obtained or attempted to obtain the license by misrepresentation, concealment,
64 or other fraud;
- 65 (3) Has committed fraud; or
- 66 (4) Has failed to obtain for initial licensure or retain for annual renewal a net worth of
67 at least \$200,000.00.
- 68 (d) If the Commissioner moves to suspend, revoke, or nonrenew a license for a pharmacy
69 benefits manager, the Commissioner shall provide notice of that action to the pharmacy
70 benefits manager and the pharmacy benefits manager may invoke the right to an
71 administrative hearing in accordance with Chapter 2 of this title.
- 72 (e) No licensee whose license has been revoked as prescribed under this Code section shall
73 be entitled to file another application for a license within five years from the effective date
74 of the revocation or, if judicial review of such revocation is sought, within five years from
75 the date of final court order or decree affirming the revocation. The application when filed
76 may be refused by the Commissioner unless the applicant shows good cause why the
77 revocation of its license shall not be deemed a bar to the issuance of a new license.
- 78 (f) Appeal from any order or decision of the Commissioner made pursuant to this chapter
79 shall be taken as provided in Chapter 2 of this title.
- 80 (g)(1) The Commissioner shall have the authority to issue a probationary license to any
81 applicant under this title.
- 82 (2) A probationary license may be issued for a period of not less than three months and
83 not longer than 12 months and shall be subject to immediate revocation for cause at any
84 time without a hearing.
- 85 (3) The Commissioner shall prescribe the terms of probation, may extend the
86 probationary period, or refuse to grant a license at the end of any probationary period in
87 accordance with rules and regulations.
- 88 (h) A pharmacy benefits manager's license may not be sold or transferred to a nonaffiliated
89 or otherwise unrelated party. A pharmacy benefits manager may not contract or
90 subcontract any of its negotiated formulary services to any unlicensed nonaffiliated
91 business entity unless a special authorization is approved by the Commissioner prior to
92 entering into a contracted or subcontracted arrangement.
- 93 (i) In addition to all other penalties provided for under this title, the Commissioner shall
94 have the authority to assess a monetary penalty against any business entity acting as a
95 pharmacy benefits manager without a license of up to \$1,000.00 for each transaction in
96 violation of this chapter, unless the business entity knew or reasonably should have known
97 it was in violation of this chapter, in which case the monetary penalty provided for in this

98 subsection may be increased to an amount up to \$5,000.00 for each and every act in
99 violation.

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

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

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

120 33-64-3.

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

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

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

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

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

143 33-64-4.

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

145 33-64-5.

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

150 33-64-6.

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

154 33-64-7.

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

157 **SECTION 2.**

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