

Senate Bill 378

By: Senators Carter of the 1st and Hawkins of the 49th

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 insurance generally, so as to define certain terms; to provide for health insurance
3 coverage for nonformulary drug products for a limited supply under certain conditions; to
4 provide for statutory construction; to provide for enforcement by the Commissioner of
5 Insurance; to provide for monetary penalties for violations; to provide for related matters; to
6 repeal conflicting laws; and for other purposes.

7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

8 **SECTION 1.**

9 Article 1 of Chapter 24 of Title 33 of the Official Code of Georgia Annotated, relating to
10 insurance generally, is amended 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) 'Health benefit plan' means any individual or group plan, policy, or contract for health
14 care services issued, delivered, issued for delivery, or renewed in this state by a health
15 benefit plan provider, including, but not limited to, those policies, plans, or contracts
16 executed by the State of Georgia on behalf of state employees under Article 1 of Chapter
17 18 of Title 45.

18 (2) 'Health benefit plan provider' means an insurance company, carrier, or similar
19 third-party payor plan.

20 (b) Every health benefit plan that is delivered, issued, executed, or renewed in this state
21 or approved for issuance or renewal in this state by the Commissioner on or after July 1,
22 2010, which provides coverage for prescription drugs shall ensure that if a physician
23 prescribes a drug product that is not on the health benefit plan provider's formulary for the
24 patient's health benefit plan, a pharmacist may dispense such prescribed drug product and
25 the health benefit plan provider shall cover such nonformulary drug product for up to a
26 ten-day supply for each prescription but not more than once per year in order to allow time

27 for the pharmacist or patient to obtain prior approval from the health benefit plan provider
28 or its pharmacy benefits manager for the prescribed drug product; provided, however, that
29 the health benefit plan provider shall not impose any penalty against the pharmacist or the
30 patient. Patients shall not be charged a copay or coinsurance that is greater than the
31 preferred drug amount or 25 percent of the wholesale acquisition cost of the drug,
32 whichever is lower.

33 (c) Every health benefit plan that sends a communication to a physician or patient about
34 the use of a prescription or nonprescription medication recommending a change in therapy
35 shall assure that the communication is truthful, accurate, and nonmisleading, while
36 reflecting a fair balance of the benefits and risks of any medication, as required by the
37 Federal Food, Drug and Cosmetic Act (FDCA) regulations. Statements in a
38 communication that express the opinion of the health benefit plan or its agent shall be
39 clearly attributed and identified as opinion statement, while clinical, market research, or
40 other data reference in such a communication shall be clearly identified and the sources of
41 such research data shall be provided in legible type. Other than a communication being
42 issued because of a product recall or withdrawal, or other similar expression of safety
43 concern on the part of the manufacturer of the prescribed medication or the federal Food
44 and Drug Administration, such written communication shall have clearly printed in bold
45 type on the first page the following legend: "This is not a product safety notice. This is a
46 promotional announcement from your health care insurer about one of your current
47 medications.'

48 (d) Nothing in this Code section shall be construed to require any health benefit plan to
49 include coverage for prescription drugs.

50 (e) The Commissioner is authorized to enforce this Code section and shall be authorized
51 to impose on a health benefit plan provider a monetary penalty of \$500.00 for a violation
52 of this Code section. If a monetary penalty is imposed by the Commissioner on a health
53 benefit plan provider pursuant to this subsection, the health benefit plan provider may
54 invoke the right to an administrative hearing in accordance with Chapter 2 of Title 33.
55 Further, the Commissioner may exercise the powers granted by Code Section 33-2-24 and
56 any other provision of this title."

57 **SECTION 2.**

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