

House Bill 1026

By: Representatives Harbin of the 122nd, Stephens of the 164th, Parrish of the 158th, Broadrick of the 4th, and Harden of the 148th

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 64 of Title 33 of the Official Code of Georgia Annotated, relating to
2 regulation and licensure of pharmacy benefits managers, so as to define certain terms; to
3 impose certain requirements for the use of maximum allowable cost pricing by pharmacy
4 benefits managers; to provide for enforcement of such requirements; to provide for
5 requirements relating to in-person pharmacy; to amend Code Section 26-4-118 of the Official
6 Code of Georgia Annotated, relating to the Pharmacy Audit Bill of Rights, so as to provide
7 for applicability to certain entities licensed by the Commissioner of Insurance; to provide for
8 related matters; to provide for an effective date; to repeal conflicting laws; and for other
9 purposes.

10 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

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

12 Chapter 64 of Title 33 of the Official Code of Georgia Annotated, relating to regulation and
13 licensure of pharmacy benefits managers, is amended by revising Code Section 33-64-1,
14 relating to definitions, as follows:

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) 'In-person pharmacy' means the lawful delivery or dispensing of prescription drugs
 29 by a pharmacy without employing the mails or other common carriers.

30 (7) 'Maximum allowable cost' means the per unit amount that a pharmacy benefits
 31 manager reimburses a pharmacist for a prescription drug, excluding dispensing fees and
 32 copayments, coinsurance, or other cost-sharing charges, if any.

33 (8) 'Pharmacy' means a pharmacy or pharmacist licensed pursuant to Chapter 4 of Title
 34 26 or another dispensing provider.

35 ~~(6)~~(9) 'Pharmacy benefits management' means the service provided to a health plan or
 36 covered entity, directly or through another entity, including the procurement of
 37 prescription drugs to be dispensed to patients, or the administration or management of
 38 prescription drug benefits, including, but not limited to, any of the following:

39 (A) Mail service pharmacy;

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

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

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

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

47 (F) Disease management.

48 ~~(7)~~(10) 'Pharmacy benefits manager' means a person, business entity, or other entity that
 49 performs pharmacy benefits management. The term includes a person or entity acting for
 50 a pharmacy benefits manager in a contractual or employment relationship in the
 51 performance of pharmacy benefits management for a covered entity. The term does not
 52 include services provided by pharmacies operating under a hospital pharmacy license.
 53 The term also does not include health systems while providing pharmacy services for
 54 their patients, employees, or beneficiaries, for indigent care, or for the provision of drugs
 55 for outpatient procedures."

56 **SECTION 2.**

57 Said chapter is further amended by revising Code Section 33-64-7, relating to a limitation
 58 on the Commissioner to extend rules and regulations, as follows:

59 "33-64-7.

60 The Commissioner may not enlarge upon or extend the provisions of this chapter through
61 any act, rule, or regulation; provided, however, that the Commissioner is authorized to
62 enforce any provision of this chapter."

63 **SECTION 3.**

64 Said chapter is further amended by adding new Code sections to read as follows:

65 "33-64-9.

66 (a) Any pharmacy benefits manager that uses maximum allowable cost pricing or
67 maximum allowable cost list pricing to determine reimbursement for in-network or
68 out-of-network pharmacists and other licensed dispensing providers shall:

69 (1) Beginning on January 1 of each calendar year, include in contracts or agreements
70 with pharmacies, pharmacists, or other licensed dispensing providers the maximum
71 allowable cost methodology, basis of the methodology, and sources used to determine the
72 maximum allowable cost for each drug;

73 (2) Provide updates on the pricing information to pharmacies, pharmacists, and other
74 licensed dispensing providers every seven calendar days;

75 (3) Disclose in the contract with the covered individual or covered entity, as applicable:

76 (A) The basis and methodology used to determine maximum allowable cost pricing;

77 (B) Whether the pharmacy benefits manager utilizes a maximum allowable cost list for
78 drugs dispensed by mail; and

79 (C) Whether it is using identical maximum allowable cost lists for all in-network
80 pharmacies, pharmacists, or other licensed dispensing providers; and, if multiple
81 maximum allowable cost lists are utilized, the pharmacy benefits manager shall disclose
82 to the covered individual or covered entity any difference between the amount paid to
83 any pharmacy, pharmacist, or other licensed dispensing provider and the amount
84 charged to the covered individual or covered entity;

85 (4) Notify the covered individual or covered entity, as applicable:

86 (A) Of any material changes or amendments to the maximum allowable cost plan
87 within 15 days of such changes; and

88 (B) If the pharmacy benefits manager begins to use a maximum allowable cost list for
89 drugs dispensed by mail, not more than 90 days nor less than 21 days before
90 implementing such practice; and

91 (5) Establish or maintain a reasonable process for:

92 (A) The timely elimination or modification of products on the maximum allowable cost
93 list to reflect general market conditions; and

94 (B) Administrative appeals to allow a pharmacy, pharmacist, or other licensed
 95 dispensing provider to contest the listed maximum allowable cost rate, and such
 96 procedure shall:

97 (i) Require a pharmacy benefits manager to respond in writing within 15 calendar
 98 days to a pharmacy, pharmacist, or other licensed dispensing provider who has
 99 contested a maximum allowable cost rate in writing; and

100 (ii) Retroactively make adjustments for all pharmacies, pharmacists, and licensed
 101 dispensing providers in the pharmacy benefits managers' networks if an appealing
 102 person is successful in his or her appeal. Such adjustments shall be retroactive to the
 103 date of the appealed price change.

104 (b) Before a drug requiring a prescription can be placed on a maximum allowable cost list
 105 by a pharmacy benefits manager, such drug shall:

106 (1) Have at least three or more nationally available, therapeutically equivalent, multiple
 107 source drugs;

108 (2) Have a cost difference between manufacturers of at least 10 percent;

109 (3) Be listed in the federal Food and Drug Administration's 'Orange Book' as 'A' rated
 110 or as therapeutically and pharmaceutically equivalent;

111 (4) Be available for purchase without limitations by all pharmacies in this state from
 112 licensed national or regional wholesalers and not be obsolete or unavailable for a period
 113 of 14 calendar days or more; and

114 (5) Be reviewed by the pharmacy benefits manager every seven calendar days and adjust
 115 prices based on such review.

116 33-64-10.

117 (a) A pharmacy benefits manager, or any other type of insurer licensed under this title,
 118 may not require covered individuals or covered entities to have different copayments,
 119 deductibles, fees, limitations on benefits, or other conditions or requirements for the use
 120 of an in-person pharmacy as compared to mail service pharmacy.

121 (b) Subsection (a) of this Code section shall only apply if the in-person pharmacy accepts
 122 from the pharmacy benefits manager or other insurer licensed under this title the same
 123 pricing, terms, and conditions or other requirements related to the cost of prescriptions and
 124 the cost and quality of dispensing prescriptions that the pharmacy benefits manager or other
 125 insurer has established for a mail service pharmacy and any of such pharmacy's affiliates,
 126 including any affiliated pharmacy benefits manager, pursuant to the policy; provided
 127 however, that nothing in this subsection shall be construed to require, as a basis of
 128 reimbursement under this Code section or any other law, a retail or specialty pharmacy to
 129 employ the mails or other common carriers to dispense or deliver prescription drugs."

130 **SECTION 4.**

131 Code Section 26-4-118 of the Official Code of Georgia Annotated, relating to the Pharmacy
 132 Audit Bill of Rights, is amended by revising subsection (b) and by adding a new subsection
 133 to read as follows:

134 "(b) Notwithstanding any other law, when an audit of the records of a pharmacy is
 135 conducted by a managed care company, insurance company, third-party payor, entity
 136 licensed by the Commissioner of Insurance pursuant to Title 33, the Department of
 137 Community Health under Article 7 of Chapter 4 of Title 49, ~~or~~ any entity that represents
 138 such companies, groups, entities, or department, or any individual bringing a claim
 139 pursuant to Article 7B of Chapter 4 of Title 49, it shall be conducted in accordance with
 140 the following bill of rights:

141 (1) The entity conducting the initial on-site audit must give the pharmacy notice at least
 142 one week prior to conducting the initial on-site audit for each audit cycle;

143 (2) Any audit which involves clinical or professional judgment must be conducted by or
 144 in consultation with a pharmacist;

145 (3) Any clerical or record-keeping error, including but not limited to a typographical
 146 error, scrivener's error, or computer error, regarding a required document or record may
 147 not in and of itself constitute fraud. No such claim shall be subject to criminal penalties
 148 without proof of intent to commit fraud. No recoupment of the cost of drugs or medicinal
 149 supplies properly dispensed shall be allowed if such error has occurred and been resolved
 150 in accordance with paragraph (4) of this subsection; provided, however, that recoupment
 151 shall be allowed to the extent that such error resulted in an overpayment, underpayment,
 152 or improper dispensing of drugs or medicinal supplies.

153 (4) A pharmacy shall be allowed at least 30 days following the conclusion of an on-site
 154 audit or receipt of the preliminary audit report in which to correct a clerical or
 155 record-keeping error or produce documentation to address any discrepancy found during
 156 an audit, including to secure and remit an appropriate copy of the record from a hospital,
 157 physician, or other authorized practitioner of the healing arts for drugs or medicinal
 158 supplies written or transmitted by any means of communication if the lack of such a
 159 record or an error in such a record is identified in the course of an on-site audit or noticed
 160 within the preliminary audit report;

161 (5) A pharmacy may use the records of a hospital, physician, or other authorized
 162 practitioner of the healing arts for drugs or medicinal supplies written or transmitted by
 163 any means of communication for purposes of validating the pharmacy record with respect
 164 to orders or refills of a legend or narcotic drug;

165 (6) A finding of an overpayment or underpayment may be a projection based on the
 166 number of patients served having a similar diagnosis or on the number of similar orders
 167 or refills for similar drugs; however, recoupment of claims must be based on the actual
 168 overpayment or underpayment unless the projection for overpayment or underpayment
 169 is part of a settlement as agreed to by the pharmacy;

170 (7) Each pharmacy shall be audited under the same standards and parameters as other
 171 similarly situated pharmacies audited by the entity;

172 (8) The period covered by an audit may not exceed two years from the date the claim
 173 was submitted to or adjudicated by a managed care company, insurance company,
 174 third-party payor, the Department of Community Health under Article 7 of Chapter 4 of
 175 Title 49, or any entity that represents such companies, groups, or department;

176 (9) An audit may not be initiated or scheduled during the first seven calendar days of any
 177 month due to the high volume of prescriptions filled during that time unless otherwise
 178 consented to by the pharmacy;

179 (10) The preliminary audit report must be delivered to the pharmacy within 120 days
 180 after conclusion of the audit. A final audit report shall be delivered to the pharmacy
 181 within six months after receipt of the preliminary audit report or final appeal, as provided
 182 for in subsection (c) of this Code section, whichever is later; and

183 (11) The audit criteria set forth in this subsection shall apply only to audits of claims
 184 submitted for payment after July 1, 2006. Notwithstanding any other provision in this
 185 subsection, the agency conducting the audit shall not use the accounting practice of
 186 extrapolation in calculating recoupments or penalties for audits."

187 "(h) The Commissioner of Insurance shall be authorized to enforce the provisions of this
 188 Code section involving audits conducted by an entity licensed by the Commissioner of
 189 Insurance pursuant to Title 33. For audits conducted by entities or individuals not licensed
 190 by the Commissioner of Insurance, an aggrieved pharmacist may seek recourse pursuant
 191 to subsection (d) of this Code section or may seek a judicial remedy in a court of competent
 192 jurisdiction."

193 **SECTION 5.**

194 This Act shall become effective upon its approval by the Governor or upon its becoming law
 195 without such approval.

196 **SECTION 6.**

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