

House Bill 473

By: Representatives Knight of the 130th, Stephens of the 164th, Shaw of the 176th, Broadrick of the 4th, Parrish of the 158th, and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 64 of Title 33 of the Official Code of Georgia Annotated, relating to the
2 regulation and licensure of pharmacy benefits managers, so as to provide that a pharmacy
3 benefits manager owes a fiduciary duty to a covered entity; to require certain notices and
4 disclosures by pharmacy benefits managers to covered entities; to require application to
5 contracts; to provide for violations; to provide for related matters; to repeal conflicting laws;
6 and for other purposes.

7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

8 **SECTION 1.**

9 Chapter 64 of Title 33 of the Official Code of Georgia Annotated, relating to the regulation
10 and licensure of pharmacy benefits managers, is amended by adding a new Code section to
11 read as follows:

12 "33-64-9.

13 (a) A pharmacy benefits manager owes a fiduciary duty to a covered entity and shall
14 discharge that duty in accordance with the provisions of state and federal law. A pharmacy
15 benefits manager shall perform its duties with care, skill, prudence, and diligence and in
16 accordance with the standards of conduct applicable to a fiduciary in an enterprise of a like
17 character and with like aims.

18 (b) A pharmacy benefits manager shall notify the covered entity in writing of any activity,
19 policy, or practice of the pharmacy benefits manager that directly or indirectly presents any
20 conflict of interest with the duties imposed by this Code section.

21 (c) A pharmacy benefits manager shall provide to a covered entity all financial and
22 utilization information requested by the covered entity relating to the provision of benefits
23 to covered individuals through that covered entity and all financial and utilization
24 information relating to services to that covered entity. A pharmacy benefits manager
25 providing information under this subsection may designate that material as confidential.
26 Information designated as confidential by a pharmacy benefits manager and provided to

27 a covered entity under this subsection may not be disclosed by the covered entity to any
28 person without the consent of the pharmacy benefits manager, except that disclosure may
29 be ordered by a court of this state for good cause shown or made in a court filing under seal
30 unless or until otherwise ordered by a court.

31 (d) With regard to the dispensation of a substitute prescription drug for a prescribed drug
32 to a covered individual, the following provisions apply:

33 (1) If a pharmacy benefits manager makes a substitution in which the substitute drug
34 costs more than the prescribed drug, the pharmacy benefits manager shall disclose to the
35 covered entity the cost of both drugs and any benefit or payment directly or indirectly
36 accruing to the pharmacy benefits manager as a result of the substitution; and

37 (2) The pharmacy benefits manager shall transfer in full to the covered entity any benefit
38 or payment received in any form by the pharmacy benefits manager either as a result of
39 a prescription drug substitution under paragraph (1) of this subsection or as a result of the
40 pharmacy benefits manager's substituting a lower-priced generic and therapeutically
41 equivalent drug for a higher-priced prescribed drug.

42 (e) A pharmacy benefits manager that derives any payment or benefit for the dispensation
43 of prescription drugs within the state based on volume of sales for certain prescription
44 drugs or classes or brands of drugs within the state shall pass that payment or benefit on
45 in full to the covered entity.

46 (f) A pharmacy benefits manager shall disclose to the covered entity all financial terms and
47 arrangements for remuneration of any kind that apply between the pharmacy benefits
48 manager and any prescription drug manufacturer or labeler, including, without limitation,
49 formulary management and drug-switch programs, educational support, claims processing
50 and pharmacy network fees that are charged from retail pharmacies and data sales fees. A
51 pharmacy benefits manager providing information under this subsection may designate that
52 material as confidential. Information designated as confidential by a pharmacy benefits
53 manager and provided to a covered entity under this subsection may not be disclosed by
54 the covered entity to any person without the consent of the pharmacy benefits manager,
55 except that disclosure may be ordered by a court of this state for good cause shown or made
56 in a court filing under seal unless or until otherwise ordered by a court.

57 (g) Compliance with the requirements of this Code section shall be required in all contracts
58 for pharmacy benefits management entered into in this state or by a covered entity in this
59 state.

60 (h) The state auditor shall work with state agencies that are covered entities that purchase
61 prescription drugs to ensure compliance of a pharmacy benefits manager with the
62 requirements of this Code section. The state auditor shall develop appropriate audit
63 procedures that may be used by the state to determine if a pharmacy benefits manager and

64 a pharmacy benefits management contract entered into by the state meets the requirements
65 of this Code section and other laws applicable to pharmacy benefits managers. Nothing
66 in this subsection shall be construed to grant the state auditor with authority over pharmacy
67 benefits managers.

68 (i) A violation of this Code section shall be deemed a violation of Code Section 10-1-393,
69 and the penalties, procedures, and remedies applicable to violations of Code Section
70 10-1-393 shall be applicable to a violation of this Code section."

71 **SECTION 2.**

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