

Senate Bill 103

By: Senators Mullis of the 53rd, Ginn of the 47th, Beach of the 21st, Burke of the 11th, Hill of the 6th 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
2 regulation and licensure of pharmacy benefits managers, so as to authorize the Commissioner
3 of Insurance to promulgate certain rules and regulations and to examine and investigate
4 certain matters with regard to pharmacy benefits managers; to prohibit pharmacy benefits
5 managers from requiring the use of mail-order pharmacies under certain conditions; to
6 provide for exceptions; to provide for certain prohibitions; to provide for enforcement; to
7 provide a short title; to provide for related matters; to provide for an effective date and
8 applicability; to repeal conflicting laws; and for other purposes.

9 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

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

11 Chapter 64 of Title 33 of the Official Code of Georgia Annotated, relating to regulation and
12 licensure of pharmacy benefits managers, is amended by revising Code Section 33-64-7,
13 relating to commissioner not authorized to extend rules and regulations and commissioner
14 authorized to enforce provisions of chapter, as follows:

15 "33-64-7.

16 The Commissioner may ~~not enlarge upon or extend~~ promulgate necessary rules and
17 regulations to effectuate the provisions of this chapter ~~through any act, rule, or regulation;~~
18 ~~provided, however, that the Commissioner is authorized to enforce any provision of this~~
19 ~~chapter and shall have the power to examine and investigate into the affairs of every~~
20 pharmacy benefits manager, including those exempt from obtaining licensure pursuant to
21 Code Section 33-64-2."

22 style="text-align:center">**SECTION 2.**

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

24 "33-64-10.

25 (a) A pharmacy benefits manager and any type of insurer licensed under this title shall not
 26 require an insured or a covered individual to use a mail-order pharmacy or pay a different
 27 co-payment fee for utilizing the pharmacy of such insured's or covered individual's choice
 28 and shall adhere to and take no action in violation of Code Section 33-30-4.3.

29 (b) An insured's or covered individual's right to use a pharmacy of his or her choice shall
 30 apply only if the pharmacy of the insured's or covered individual's choice is appropriately
 31 licensed to practice, is in good standing with the Georgia Board of Pharmacy, is within the
 32 geographic coverage area of the pharmacy benefits manager, and is willing to accept from
 33 the pharmacy benefits manager or other insurer licensed under this title the same pricing,
 34 terms and conditions, and other requirements related to the cost of prescriptions and other
 35 pharmacy care that the pharmacy benefits manager or insurer has established for other
 36 participating mail-order and retail pharmacies servicing patients within the State of
 37 Georgia.

38 (c) This Code section shall not apply to any self-funded, employer sponsored health
 39 insurance plan regulated under the federal Employee Retirement Income Security Act of
 40 1974, as amended, 29 U.S.C. Section 1001, et seq.

41 33-64-11.

42 (a) This Code section shall be known and may be cited as 'The Pharmacy Patient Fair
 43 Practices Act.'

44 (b) A pharmacy benefits manager shall be proscribed from:

45 (1) Prohibiting a pharmacist or pharmacy from providing information on or selling to
 46 insureds or covered individuals an alternative to a prescription drug when there is a
 47 clinically effective, less costly alternative prescription drug available, or otherwise
 48 interfering with a pharmacist's ability to provide pharmacy care to insureds or covered
 49 individuals;

50 (2) Prohibiting a pharmacist or pharmacy from offering and providing delivery services
 51 to insureds or covered individuals;

52 (3) Prohibiting or restricting a pharmacist or pharmacy from advocating to the pharmacy
 53 benefits manager on behalf of an insured or covered individual for approval or coverage
 54 for a particular course of treatment or for the provision of pharmacy care services;

55 (4) Charging or collecting from an insured or covered individual an amount greater than
 56 the pharmacist or pharmacy providing pharmacy care retains from the insured or covered
 57 individual and the pharmacy benefits manager;

58 (5) Steering or referring an insured or covered individual for the provision of pharmacy
 59 care services to an entity in which the pharmacy benefits manager has an investment

60 interest, either directly or indirectly, through one or more intermediaries of the pharmacy
61 benefits manager or taking any action in violation of Chapter 1B of Title 43;
62 (6) Directly or indirectly charging or holding a pharmacist or pharmacy responsible for
63 any fee including, but not limited to, charges or withholdings related to the adjudication
64 process or performance standards;
65 (7) Recouping funds from a pharmacist or pharmacy without first complying with the
66 requirements set forth in Code Section 26-4-118; and
67 (8) Terminating or failing to renew a contract with a pharmacy or taking any adverse
68 action against an insured, covered individual, pharmacist, pharmacy, or other entity
69 acting on their behalf, including a pharmacy services administrative organization, for
70 advocating on behalf of an insured or covered individual or exercising rights under this
71 chapter or Code Section 26-4-118.
72 (c) In addition to any other remedy provided by law, a violation of this chapter may be
73 enforced by the Commissioner administratively or may be enforced by a person in the
74 superior court of the county in this state where such person resides.
75 (d) To the extent that any provision of this chapter is inconsistent or conflicts with
76 applicable federal law, rule, or regulation such applicable federal law, rule, or regulation
77 shall apply."

78 **SECTION 3.**

79 This Act shall become effective on July 1, 2017, and shall apply to all contracts issued,
80 delivered, or issued for delivery in this state on and after such date.

81 **SECTION 4.**

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