

House Bill 946

By: Representatives Knight of the 130th, Hatchett of the 150th, England of the 116th, Stephens of the 164th, Jasperse of the 11th, 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 provide extensive revisions
3 regarding pharmacy benefits managers; to revise definitions; to revise provisions relating to
4 license requirements and filing fees; to revise a provision regarding the prohibition on the
5 practice of medicine by a pharmacy benefits manager; to provide additional authority for the
6 Insurance Commissioner to regulate pharmacy benefits managers; to revise provisions
7 relating to rebates from pharmaceutical manufacturers; to revise provisions relating to
8 administration of claims; to revise provisions relating to prohibited activities; to provide for
9 surcharges on certain practices; to provide for statutory construction; to provide for related
10 matters; to provide for an effective date and applicability; to repeal conflicting laws; and for
11 other purposes.

12 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

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

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

17 "33-64-1.

18 As used in this chapter, the term:

19 (1) 'Affiliate pharmacy' means a pharmacy which, either directly or indirectly through
20 one or more intermediaries:

21 (A) Has an investment or ownership interest in a pharmacy benefits manager licensed
22 under this chapter;

23 (B) Shares common ownership with a pharmacy benefits manager licensed under this
24 chapter; or

25 (C) Has an investor or ownership interest holder which is a pharmacy benefits manager
26 licensed under this chapter.

27 ~~(1)~~(2) 'Business entity' means a corporation, association, partnership, sole proprietorship,
28 limited liability company, limited liability partnership, or other legal entity.

29 ~~(2)~~ 'Covered entity' means an employer, labor union, or other group of persons organized
30 in this state that provides health coverage to covered individuals who are employed or
31 reside in this state.

32 ~~(3)~~ 'Covered individual' means a member, participant, enrollee, contract holder, policy
33 holder, or beneficiary of a covered entity who is provided health coverage by a covered
34 entity.

35 ~~(3.1)~~(3) 'Dispenser' shall have the same meaning as in paragraph (10) of Code Section
36 16-13-21.

37 (4) 'Health plan' means an individual or group plan or program which is established by
38 contract, certificate, law, plan, policy, subscriber agreement, or any other method and
39 which is entered into, issued, or offered for the purpose of arranging for, delivering,
40 paying for, providing, or reimbursing any of the costs of health care or medical care,
41 including pharmacy services, drugs, or devices. Such term includes any health care
42 coverage provided under the state health benefit plan pursuant to Article 1 of Chapter 18
43 of Title 45; the medical assistance program pursuant to Article 7 of Chapter 4 of Title 49;
44 the PeachCare for Kids Program pursuant to Article 13 of Chapter 5 of Title 49; and any
45 other health benefit plan or policy administered by or on behalf of this state.

46 ~~(4)~~(5) 'Health system' means a hospital or any other facility or entity owned, operated,
47 or leased by a hospital and a long-term care home.

48 (6) 'Insured' means a person who receives prescription drug benefits administered by a
49 pharmacy benefits manager.

50 ~~(5)~~(7) 'Maximum allowable cost' means the per unit amount that a pharmacy benefits
51 manager reimburses a pharmacist for a prescription drug, excluding dispensing fees and
52 copayments, coinsurance, or other cost-sharing charges, if any.

53 (8) 'National average drug acquisition cost' means the monthly survey of retail
54 pharmacies conducted by the federal Centers for Medicare and Medicaid Services to
55 determine average acquisition cost for Medicaid covered outpatient drugs.

56 ~~(6)~~(9) 'Pharmacy' means a pharmacy or pharmacist licensed pursuant to Chapter 4 of
57 Title 26 or another dispensing provider.

58 ~~(7)~~(10) 'Pharmacy benefits management' means the administration of a plan or program
59 that pays for, reimburses, and covers the cost of drugs, devices, or pharmacy care to
60 insureds on behalf of a health plan. The term shall not include the practice of pharmacy
61 as defined in Code Section 26-4-4. service provided to a health plan or covered entity,
62 directly or through another entity, including the procurement of prescription drugs to be

63 dispensed to patients, or the administration or management of prescription drug benefits,
 64 including, but not limited to, any of the following:

65 ~~(A) Mail order pharmacy;~~

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

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

69 ~~(D) Negotiation or administration of rebates, discounts, payment differentials, or other~~
 70 ~~incentives for the inclusion of particular prescription drugs in a particular category or~~
 71 ~~to promote the purchase of particular prescription drugs;~~

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

73 ~~(F) Disease management.~~

74 ~~(8)~~(11) 'Pharmacy benefits manager' means a person, business entity, or other entity that
 75 performs pharmacy benefits management. The term includes a person or entity acting for
 76 a pharmacy benefits manager in a contractual or employment relationship in the
 77 performance of pharmacy benefits management for a ~~covered entity~~ health plan. The
 78 term does not include services provided by pharmacies operating under a hospital
 79 pharmacy license. The term also does not include health systems while providing
 80 pharmacy services for their patients, employees, or beneficiaries, for indigent care, or for
 81 the provision of drugs for outpatient procedures. The term also does not include services
 82 provided by pharmacies affiliated with a facility licensed under Code Section 31-44-4 or
 83 a licensed group model health maintenance organization with an exclusive medical group
 84 contract and which operates its own pharmacies which are licensed under Code Section
 85 26-4-110.

86 (12) 'Point-of-sale fee' means all or a portion of a drug reimbursement to a pharmacy or
 87 other dispenser withheld at the time of adjudication of a claim for any reason.

88 (13) 'Retroactive fee' means all or a portion of a drug reimbursement to a pharmacy or
 89 other dispenser recouped or reduced following adjudication of a claim for any reason,
 90 except as otherwise permissible as described in Code Section 26-4-118.

91 (14) 'Steering' means:

92 (A) Ordering an insured to use its affiliate pharmacy for the filling of a prescription or
 93 the provision of pharmacy care;

94 (B) Ordering an insured to use an affiliate pharmacy of another pharmacy benefits
 95 manager licensed under this chapter pursuant to an arrangement or agreement for the
 96 filling of a prescription or the provision of pharmacy care;

97 (C) Offering or implementing plan designs that require an insured to utilize its affiliate
 98 pharmacy or an affiliate pharmacy of another pharmacy benefits manager licensed
 99 under this chapter or that increases plan or insured costs, including requiring an insured

100 to pay the full cost for a prescription when an insured chooses not to use any affiliate
 101 pharmacy; or
 102 (D) Advertising, marketing, or promoting its affiliate pharmacy or an affiliate
 103 pharmacy of another pharmacy benefits manager licensed under this chapter to
 104 insureds. Subject to the foregoing, a pharmacy benefits manager may include its
 105 affiliated pharmacy or an affiliate pharmacy of another pharmacy benefits manager
 106 licensed under this chapter in communications to patients, including patient and
 107 prospective patient specific communications, regarding network pharmacies and prices,
 108 provided that the pharmacy benefits manager includes information regarding eligible
 109 nonaffiliated pharmacies in such communications and that the information provided is
 110 accurate."

111 **SECTION 2.**

112 Said chapter is further amended by revising Code Section 33-64-2, relating to license
 113 requirements and filing fees, as follows:

114 "33-64-2.

115 (a) No person, business entity, or other entity shall act as or hold itself out to be a
 116 pharmacy benefits manager in this state, other than an applicant licensed in this state for
 117 the kinds of business for which it is acting as a pharmacy benefits manager, unless such
 118 person, business entity, or other entity holds a license as a pharmacy benefits manager
 119 issued by the Commissioner pursuant to this chapter. The license shall be renewable on
 120 an annual basis. Failure to hold such license shall subject such person, business entity, or
 121 other entity to the fines and other appropriate penalties as provided in Chapter 2 of this
 122 title.

123 (b) An application for a pharmacy benefits manager's license or an application for renewal
 124 of such license shall be accompanied by a filing fee of ~~\$500.00~~ \$2,000.00 for an initial
 125 license and ~~\$400.00~~ \$1,000.00 for renewal.

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

128 (1) Has intentionally misrepresented or concealed any material fact in the application for
 129 the license;

130 (2) Has obtained or attempted to obtain the license by misrepresentation, concealment,
 131 or other fraud;

132 (3) Has committed fraud; ~~or~~

133 (4) Has failed to obtain for initial licensure or retain for annual licensure renewal a net
 134 worth of at least \$200,000.00; or

135 (5) Has violated any provision of this chapter while on probation, if for license renewal.

136 (d) If the Commissioner moves to suspend, revoke, or nonrenew a license for a pharmacy
137 benefits manager, the Commissioner shall provide notice of that action to the pharmacy
138 benefits manager, and the pharmacy benefits manager may invoke the right to an
139 administrative hearing in accordance with Chapter 2 of this title.

140 (e) No licensee whose license has been revoked as prescribed under this Code section shall
141 be entitled to file another application for a license within five years from the effective date
142 of the revocation or, if judicial review of such revocation is sought, within five years from
143 the date of final court order or decree affirming the revocation. The application when filed
144 may be refused by the Commissioner unless the applicant shows good cause why the
145 revocation of its license shall not be deemed a bar to the issuance of a new license.

146 (f) Appeal from any order or decision of the Commissioner made pursuant to this chapter
147 shall be taken as provided in Chapter 2 of this title.

148 (g)(1) The Commissioner shall have the authority to issue a probationary license to any
149 applicant under this title.

150 (2) A probationary license may be issued for a period of not less than three months and
151 not longer than 12 months and shall be subject to immediate revocation for cause at any
152 time without a hearing.

153 (3) The Commissioner shall prescribe the terms of probation, may extend the
154 probationary period, or refuse to grant a license at the end of any probationary period in
155 accordance with rules and regulations.

156 (h) A pharmacy benefits manager's license may not be sold or transferred to a nonaffiliated
157 or otherwise unrelated party. A pharmacy benefits manager may not contract or
158 subcontract any of its negotiated formulary services to any unlicensed ~~nonaffiliated~~
159 business entity ~~unless a special authorization is approved by the Commissioner prior to~~
160 ~~entering into a contracted or subcontracted arrangement.~~

161 (i) In addition to all other penalties provided for under this title, the Commissioner shall
162 have the authority to assess a monetary penalty against any person, business entity, or other
163 entity acting as a pharmacy benefits manager without a license of up to ~~\$1,000.00~~
164 \$2,000.00 for each transaction in violation of this chapter, unless such person, business
165 entity, or other entity knew or reasonably should have known it was in violation of this
166 chapter, in which case the monetary penalty provided for in this subsection may be
167 increased to an amount of up to ~~\$5,000.00~~ \$10,000.00 for each and every act in violation.

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

171 (k) In addition to all other penalties provided for under this title, the Commissioner shall
172 have the authority to place any pharmacy benefits manager on probation for a period of

173 time not to exceed one year for each and every act in violation of this chapter and ~~may~~ shall
 174 subject such pharmacy benefits manager to a monetary penalty of up to ~~\$1,000.00~~
 175 \$2,000.00 for each and every act in violation of this chapter, unless the pharmacy benefits
 176 manager knew or reasonably should have known he or she was in violation of this chapter,
 177 in which case the monetary penalty provided for in this subsection ~~may~~ shall be increased
 178 to an amount of up to ~~\$5,000.00~~ \$10,000.00 for each and every act in violation. In the
 179 event a pharmacy benefits manager violates any provision of this chapter while on
 180 probation, the Commissioner shall have the authority to suspend the pharmacy benefits
 181 manager's license. For purposes of this subsection, a violation shall be considered to have
 182 occurred each time an act in violation of this chapter is committed.
 183 ~~(1) A pharmacy benefits manager operating as a line of business or affiliate of a health~~
 184 ~~insurer, health care center, or fraternal benefit society licensed in this state or of any~~
 185 ~~affiliate of such health insurer, health care center, or fraternal benefit society shall not be~~
 186 ~~required to obtain a license pursuant to this chapter. Such health insurer, health care center,~~
 187 ~~or fraternal benefit society shall notify the Commissioner annually, in writing, on a form~~
 188 ~~provided by the Commissioner, that it is affiliated with or operating as a line of business~~
 189 ~~as a pharmacy benefits manager."~~

190 SECTION 3.

191 Said chapter is further amended by revising Code Section 33-64-4, relating to a prohibition
 192 on the practice of medicine by a pharmacy benefits manager, as follows:

193 "33-64-4.

194 (a) No pharmacy benefits manager shall engage in the practice of medicine, except as
 195 otherwise provided in subsection (b) of this Code section.

196 (b)(1) A pharmacy benefits manager shall not employ or contract with a physician for
 197 the purpose of advising on or making formulary development, formulary management,
 198 step therapy, or prior authorization determinations unless the physician:

199 (A) Is licensed by the Georgia Composite Medical Board to practice medicine;

200 (B) Actively sees patients; and

201 (C) Engages in the practice of medicine that focuses on the same disease or condition
 202 for which he or she is providing advisement.

203 (2) A pharmacy benefits manager shall report to the Georgia Composite Medical Board
 204 and the State Board of Pharmacy any adverse patient outcomes in which a pharmacy
 205 benefits manager required a prior authorization which delayed an insured's access to the
 206 initially prescribed medication or which resulted in the utilization of a different
 207 medication than initially prescribed."

208 **SECTION 4.**

209 Said chapter is further amended by revising Code Section 33-64-7, relating to a prohibition
 210 on the extension of rules and regulations and the enforcement of specific provisions of the
 211 chapter and rules and regulations, as follows:

212 "33-64-7.

213 ~~(a) The Commissioner may not enlarge upon or extend the specific provisions of this~~
 214 ~~chapter through any act, rule, or regulation; provided, however, that the Commissioner is~~
 215 ~~authorized to~~ shall enforce any specific provision the provisions of this chapter and ~~may~~
 216 shall promulgate rules and regulations to ~~effectuate the specific~~ implement the provisions
 217 of this chapter to ensure the safe and proper operations of pharmacy benefits managers in
 218 this state.

219 (b) In addition to all other authority granted by this title, the Commissioner shall:

220 (1) Conduct financial examinations and compliance audits of pharmacy benefits
 221 managers at least once every three years for health plans that are established pursuant to
 222 Article 1 of Chapter 18 of Title 45 or pursuant to Article 7 of Chapter 4 of Title 49, and
 223 periodically for all other pharmacy benefits managers, to ensure compliance with the
 224 provisions of this chapter and rules and regulations implemented pursuant to this chapter.
 225 The pharmacy benefits manager subject to a financial examination or compliance audit
 226 shall pay all the actual expenses incurred in conducting the examination or audit. When
 227 the examination or audit is made by an examiner or auditor who is not a regular employee
 228 of the department, the pharmacy benefits manager examined or audited shall pay the
 229 proper expenses for the services of the examiner or auditor and his or her assistants and
 230 the actual travel and lodging expenses incurred by such examiners, auditors, and
 231 assistants in an amount approved by the Commissioner. The examiner or auditor shall
 232 file a consolidated accounting of expenses for the examination or audit with the
 233 Commissioner. No pharmacy benefits manager shall pay, and no examiner or auditor
 234 shall accept, any additional emolument on account of any examination or audit. When
 235 the examination or audit is conducted in whole or in part by regular salaried employees
 236 of the department, payment for such services and proper expenses shall be made by the
 237 pharmacy benefits manager examined or audited to the Commissioner. The
 238 Commissioner shall be authorized to keep a portion of examination or audit fees paid by
 239 the pharmacy benefits manager examined or audited to pay for any costs incurred as a
 240 result of the examination or audit, and any fees remaining shall be deposited in the state
 241 treasury; provided, however, that when a pharmacy benefits manager is examined or
 242 audited because of a complaint filed against such pharmacy benefits manager and it is
 243 determined by the Commissioner that the complaint was not justified, the expenses

244 incurred as a result of the examination or audit shall not be assessed against the pharmacy
 245 benefits manager but shall be borne by the department;
 246 (2) Investigate complaints of alleged violations of this chapter;
 247 (3) Issue cease and desist orders when a pharmacy benefits manager is taking or
 248 threatening to take action in violation of this chapter or rules and regulations
 249 implemented pursuant to this chapter; and
 250 (4) Order reimbursement to an insured, pharmacy, or dispenser who has incurred a
 251 monetary loss as a result of a violation of this chapter or rules and regulations
 252 implemented pursuant to this chapter as well as order payment of a fine not to exceed
 253 \$1,000.00 per violation to an insured, pharmacy, or dispenser who has been aggrieved as
 254 a result of a violation of this chapter or rules and regulations implemented pursuant to this
 255 chapter. Such fine shall be in addition to and shall not preclude any other fines imposed
 256 pursuant to this title. For purposes of this paragraph, a violation shall be considered to
 257 have occurred each time a prohibited act is committed.
 258 (c) A pharmacy benefits manager shall make its records available to the Commissioner,
 259 deidentified of any protected health information, upon written demand and provide
 260 cooperation in connection with financial examinations, compliance audits, and
 261 investigations.
 262 (d) In the event a violation of this chapter or rules and regulations implemented pursuant
 263 to this chapter is found following a complaint, the Commissioner may, at his or her
 264 discretion, conduct a compliance audit to identify whether any other similar violations have
 265 occurred within the state."

266 SECTION 5.

267 Said chapter is further amended by adding a new Code section to read as follows:

268 "33-64-9.1.

269 (a)(1) Any methodologies utilized by a pharmacy benefits manager in connection with
 270 reimbursement pursuant to Code Section 33-64-9 shall be filed with the Commissioner
 271 for use in determining maximum allowable cost appeals.

272 (2) A pharmacy benefits manager shall utilize the national average drug acquisition cost
 273 as a point of reference for the ingredient drug product component of a pharmacy's
 274 reimbursement for drugs appearing on the national average drug acquisition cost list and
 275 shall file with the Commissioner every three months a report, which shall be available to
 276 the public, of all drugs appearing on the national average drug acquisition cost list
 277 reimbursed 10 percent and below the national average drug acquisition cost, as well as
 278 all drugs reimbursed 10 percent and above the national average drug acquisition cost. For
 279 each drug in the report, a pharmacy benefits manager shall include the month the drug

280 was dispensed, the quantity of the drug dispensed, the amount the pharmacy was
 281 reimbursed per unit or dosage, whether the dispensing pharmacy was an affiliate, whether
 282 the drug was dispensed pursuant to a state or local government health plan, and the
 283 national average drug acquisition cost on the day the drug was dispensed.

284 (3) This subsection shall not apply to Medicaid under Chapter 4 of Title 49 when the
 285 department reimburses providers directly for each covered service; provided, however,
 286 that it shall apply to Medicaid managed care programs administered through care
 287 management organizations.

288 (b) A pharmacy benefits manager shall not:

289 (1) Reimburse a pharmacy in this state an amount less than the amount that the pharmacy
 290 benefits manager reimburses an affiliate pharmacy for providing the same pharmacy
 291 services; or

292 (2) Engage in any practice that:

293 (A) In any way bases pharmacy reimbursement for a drug on patient outcomes, scores,
 294 or metrics; provided, however, that nothing shall prohibit the reimbursement of a
 295 pharmacy for providing pharmacy care, including reimbursement incentives based on
 296 patient outcomes, scores, or metrics;

297 (B) Includes imposing a point-of-sale fee or retroactive fee; or

298 (C) Derives any revenue from a pharmacy or insured in connection with performing
 299 pharmacy benefits management services.

300 (c) This Code section shall also apply to pharmacy benefits managers' reimbursements
 301 to dispensers."

302 **SECTION 6.**

303 Said chapter is further amended by revising Code Section 33-64-10, relating to
 304 administration of claims by pharmacy benefits manager, as follows:

305 "33-64-10.

306 (a) A pharmacy benefits manager shall administer claims in compliance with Code Section
 307 33-30-4.3 and shall not require insureds to use a mail-order pharmaceutical distributor
 308 including a mail-order pharmacy.

309 (b) A pharmacy benefits manager shall pass on to the health plan 100 percent of all rebates
 310 and other payments it receives from pharmaceutical manufacturers in connection with
 311 claims administered on behalf of such health plan. In addition, a pharmacy benefits
 312 manager shall report annually to each client, including but not limited to, insurers and
 313 payors, health plan the aggregate amount of all rebates and other payments that the
 314 pharmacy benefits manager received from pharmaceutical manufacturers in connection
 315 with claims if administered on behalf of the client and the aggregate amount of such rebates

316 ~~the pharmacy benefits manager received from pharmaceutical manufacturers that it did not~~
 317 ~~pass through to the client health plan.~~

318 (c) A pharmacy benefits manager shall charge a health plan the same price for a
 319 prescription drug as it pays a pharmacy for the prescription drug.

320 (d) A pharmacy benefits manager shall apply any third-party payment, financial assistance,
 321 discount, product voucher, or other reduction in out-of-pocket expenses made by or on
 322 behalf of an insured toward an insured's cost share or copay responsibility.

323 (e) A pharmacy benefits manager owes a fiduciary duty to a health plan and shall
 324 discharge that duty in accordance with the provisions of state and federal law. A pharmacy
 325 benefits manager shall perform its duties with care, skill, prudence, and diligence and in
 326 accordance with the standards of conduct applicable to a fiduciary in an enterprise of a like
 327 character and with like purposes.

328 (f) A pharmacy benefits manager shall notify the health plan in writing of any activity,
 329 policy, or practice of the pharmacy benefits manager that directly or indirectly presents any
 330 conflict of interest with the duties imposed by this Code section.

331 ~~(e)(g)~~ This Code section shall not apply to:

332 (1) ~~A care management organization, as defined in Chapter 21A of this title;~~

333 (2) ~~The Department of Community Health, as defined in Chapter 2 of Title 31;~~

334 (3) ~~The State Health Benefit Plan under Article 1 of Chapter 18 of Title 45; or~~

335 (4) ~~Any any licensed group model health maintenance organization with an exclusive~~
 336 ~~medical group contract and which operates its own pharmacies which are licensed under~~
 337 ~~Code Section 26-4-110.† 26-4-110."~~

338 SECTION 7.

339 Said chapter is further amended by revising Code Section 33-64-11, relating to prohibited
 340 activities of pharmacy benefits manager, as follows:

341 "33-64-11.

342 (a) A pharmacy benefits manager shall be proscribed from:

343 (1) Prohibiting a pharmacist, pharmacy, or other dispenser or dispenser practice from
 344 providing an insured individual information on the amount of the insured's cost share for
 345 such insured's prescription drug and the clinical efficacy of a more affordable alternative
 346 drug if one is available. No pharmacist, pharmacy, or other dispenser or dispenser
 347 practice shall be penalized by a pharmacy benefits manager for disclosing such
 348 information to an insured or for selling to an insured a more affordable alternative if one
 349 is available;

- 350 (2) Prohibiting a pharmacist, pharmacy, or other dispenser or dispenser practice from
 351 offering and providing ~~store-direct~~ delivery services to an insured as an ancillary service
 352 of the pharmacy or dispenser practice;
- 353 (3) Charging or collecting from an insured a copayment that exceeds the total submitted
 354 charges by the network pharmacy or other dispenser practice for which the pharmacy or
 355 dispenser practice is paid;
- 356 (4) Charging or holding a pharmacist or pharmacy or dispenser or dispenser practice
 357 responsible for a fee or penalty relating to the adjudication of a claim or an audit
 358 conducted pursuant to Code Section 26-4-118, provided that this shall not restrict
 359 recoupments made in accordance with Code Section 26-4-118 ~~or pay for performance~~
 360 ~~recoupments otherwise permitted by law~~;
- 361 (5) Recouping funds from a pharmacy in connection with claims for which the pharmacy
 362 has already been paid without first complying with the requirements set forth in Code
 363 Section 26-4-118, unless such recoupment is otherwise permitted or required by law;
- 364 (6) Penalizing or retaliating against a pharmacist or pharmacy for exercising rights under
 365 this chapter or Code Section 26-4-118;
- 366 (7) Steering. ~~Ordering an insured for the filling of a prescription or the provision of~~
 367 ~~pharmacy care services to an affiliated pharmacy; offering or implementing plan designs~~
 368 ~~that require patients to utilize an affiliated pharmacy; or advertising, marketing, or~~
 369 ~~promoting a pharmacy by an affiliate to patients or prospective patients. Subject to the~~
 370 ~~foregoing, a pharmacy benefits manager may include an affiliated pharmacy in~~
 371 ~~communications to patients, including patient and prospective patient specific~~
 372 ~~communications, regarding network pharmacies and prices, provided that the pharmacy~~
 373 ~~benefits manager includes information regarding eligible nonaffiliated pharmacies in such~~
 374 ~~communications and the information provided is accurate. This paragraph shall not be~~
 375 ~~construed to prohibit a pharmacy benefits manager from entering into an agreement with~~
 376 ~~an affiliated pharmacy or an affiliated pharmacy of another pharmacy benefits manager~~
 377 ~~licensed pursuant to this chapter to provide pharmacy care to patients. The restrictions~~
 378 ~~in this paragraph shall not apply to limited distribution prescription drugs requiring~~
 379 ~~special handling and not commonly carried at retail pharmacies or oncology clinics or~~
 380 ~~practices~~;
- 381 (8) Transferring or sharing records relative to prescription information containing
 382 patient-identifiable and prescriber-identifiable data to an affiliated pharmacy for any
 383 commercial purpose; provided, however, that nothing shall be construed to prohibit the
 384 exchange of prescription information between a pharmacy benefits manager and an
 385 affiliated pharmacy for the limited purposes of pharmacy reimbursement, formulary
 386 compliance, pharmacy care, or utilization review;

- 387 (9) Knowingly making a misrepresentation to an insured, pharmacist, pharmacy,
 388 dispenser, or dispenser practice; ~~and~~
- 389 (10) Taking any action in violation of subparagraphs (a)(21)(D) and (a)(21)(E) of Code
 390 Section 26-4-28 or charging a pharmacy a fee in connection with network enrollment;
- 391 (11) Withholding coverage or requiring prior authorization for a lower cost
 392 therapeutically equivalent drug available to an insured or failing to reduce an insured's
 393 cost share when an insured selects a lower cost therapeutically equivalent drug; and
- 394 (12) Removing a drug from a formulary or denying coverage of a drug for the purpose
 395 of incentivizing an insured to seek coverage from a different health plan.
- 396 (b) To the extent that any provision of this Code section is inconsistent or conflicts with
 397 applicable federal law, rule, or regulation, such applicable federal law, rule, or regulation
 398 shall apply; provided, however, that a pharmacy benefits manager contracted or
 399 subcontracted with this state, including any agency or department thereof, shall agree as
 400 a condition to contract that it will not violate this Code section or any other provision of
 401 this chapter or of any rules or regulations implemented pursuant to this chapter in
 402 performing any services in this state.
- 403 (c) This Code section shall not apply to:
- 404 (1) ~~A care management organization, as defined in Chapter 21A of this title;~~
- 405 (2) ~~The Department of Community Health, as defined in Chapter 2 of Title 31;~~
- 406 (3) ~~The State Health Benefit Plan under Article 1 of Chapter 18 of Title 45; or~~
- 407 (4) ~~Any any licensed group model health maintenance organization with an exclusive~~
 408 ~~medical group contract and which operates its own pharmacies which are licensed under~~
 409 ~~Code Section ~~26-4-110.1~~ 26-4-110."~~

410 **SECTION 8.**

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

412 "33-64-12.

413 (a) The General Assembly finds that:

- 414 (1) The practice of steering by a pharmacy benefits manager represents a conflict of
 415 interest;
- 416 (2) The practice of imposing point-of-sale fees or retroactive fees obscures the true cost
 417 of prescription drugs in this state;
- 418 (3) These practices have resulted in harm, including increasing drug prices, overcharging
 419 insureds and payors, restricting insureds' choice of pharmacies and other dispensers,
 420 underpaying community pharmacies and other dispensers, and fragmenting and creating
 421 barriers to care, particularly in rural Georgia and for patients battling life-threatening
 422 illnesses and chronic diseases; and

423 (4) Imposing a surcharge on pharmacy benefits managers that engage in these practices
424 in this state may encourage entities licensed under this title and other payors to use
425 pharmacy benefits managers that are committed to refraining from such practices.

426 (b)(1) A pharmacy benefits manager that engages in the practices of steering or imposing
427 point-of-sale fees or retroactive fees shall be subject to a surcharge payable to the state
428 of 10 percent on the aggregate dollar amount it reimbursed pharmacies in the previous
429 calendar year for prescription drugs for Georgia insureds.

430 (2) Any other person operating a health plan and licensed under this title whose
431 contracted pharmacy benefits manager engages in the practices of steering or imposing
432 point-of-sale fees or retroactive fees in connection with its health plans shall be subject
433 to a surcharge payable to the state of 10 percent on the aggregate dollar amount its
434 pharmacy benefits manager reimbursed pharmacies on its behalf in the previous calendar
435 year for prescription drugs for Georgia insureds.

436 (c)(1) By March 1 of each year, a pharmacy benefits manager shall provide a report to
437 the Department of Audits and Accounts and the Commissioner attesting as to whether or
438 not, in the previous calendar year, it engaged in the practices of steering or imposing
439 point-of-sale fees or retroactive fees and detailing all prescription drug claims it
440 administered for Georgia insureds on behalf of each health plan client in the previous
441 calendar year. The report shall be confidential and not subject to Article 4 of Chapter 18
442 of Title 50, relating to open records; provided, however, that the Department of Audits
443 and Accounts shall prepare an aggregate report reflecting the total number of
444 prescriptions administered by the reporting pharmacy benefits manager on behalf of all
445 health plans in the state along with the total sum due to the state.

446 (2) By March 1 of each year, any other person operating a health plan and licensed under
447 this title that utilizes a contracted pharmacy benefits manager shall provide a report to the
448 Department of Audits and Accounts and the Commissioner attesting as to whether or not,
449 in the previous calendar year, its contracted pharmacy benefits manager engaged in the
450 practices of steering or imposing point-of-sale fees or retroactive fees in connection with
451 its health plans and detailing all prescription drug claims its pharmacy benefits manager
452 administered for Georgia insureds on its behalf in the previous calendar year. The report
453 shall be confidential and not subject to Article 4 of Chapter 18 of Title 50, relating to
454 open records.

455 (d) By April 1 of each year, a pharmacy benefits manager or other person operating a
456 health plan and licensed under this title shall pay into the general fund of the state treasury
457 the surcharge owed, if any, as contained in the report submitted pursuant to subsection (c)
458 of this Code section.

459 (e) Nothing in this Code section shall be construed to authorize the practices of steering
460 or imposing point-of-sale fees or retroactive fees where otherwise prohibited by law.

461 33-64-13.

462 To the extent that any provision of this chapter is inconsistent or conflicts with applicable
463 federal law, rule, or regulation, such applicable federal law, rule, or regulation shall apply."

464 **SECTION 9.**

465 This Act shall become effective on January 1, 2021, and shall apply to all contracts issued,
466 delivered, or issued for delivery in this state on and after such date.

467 **SECTION 10.**

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