

The House Special Committee on Access to Quality Health Care offers the following substitute to HB 946:

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) 'Rebate' means any and all payments that accrue to a pharmacy benefits manager or  
 89 its health plan client, directly or indirectly, from a pharmaceutical manufacturer,  
 90 including but not limited to discounts, administration fees, credits, incentives, or penalties  
 91 associated directly or indirectly in any way with claims administered on behalf of a health  
 92 plan client.

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

96 (15) 'Steering' means:

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

99 (B) Ordering an insured to use an affiliate pharmacy of another pharmacy benefits  
 100 manager licensed under this chapter pursuant to an arrangement or agreement for the  
 101 filling of a prescription or the provision of pharmacy care;  
 102 (C) Offering or implementing plan designs that require an insured to utilize its affiliate  
 103 pharmacy or an affiliate pharmacy of another pharmacy benefits manager licensed  
 104 under this chapter or that increases plan or insured costs, including requiring an insured  
 105 to pay the full cost for a prescription when an insured chooses not to use any affiliate  
 106 pharmacy; or  
 107 (D) Advertising, marketing, or promoting its affiliate pharmacy or an affiliate  
 108 pharmacy of another pharmacy benefits manager licensed under this chapter to  
 109 insureds. Subject to the foregoing, a pharmacy benefits manager may include its  
 110 affiliated pharmacy or an affiliate pharmacy of another pharmacy benefits manager  
 111 licensed under this chapter in communications to patients, including patient and  
 112 prospective patient specific communications, regarding network pharmacies and prices,  
 113 provided that the pharmacy benefits manager includes information regarding eligible  
 114 nonaffiliated pharmacies in such communications and that the information provided is  
 115 accurate."

116 **SECTION 2.**

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

119 "33-64-2.

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

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

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

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

- 135 (2) Has obtained or attempted to obtain the license by misrepresentation, concealment,  
 136 or other fraud;
- 137 (3) Has committed fraud; ~~or~~
- 138 (4) Has failed to obtain for initial licensure or retain for annual licensure renewal a net  
 139 worth of at least \$200,000.00; or
- 140 (5) Has violated any provision of this chapter while on probation, if for license renewal.
- 141 (d) If the Commissioner moves to suspend, revoke, or nonrenew a license for a pharmacy  
 142 benefits manager, the Commissioner shall provide notice of that action to the pharmacy  
 143 benefits manager, and the pharmacy benefits manager may invoke the right to an  
 144 administrative hearing in accordance with Chapter 2 of this title.
- 145 (e) No licensee whose license has been revoked as prescribed under this Code section shall  
 146 be entitled to file another application for a license within five years from the effective date  
 147 of the revocation or, if judicial review of such revocation is sought, within five years from  
 148 the date of final court order or decree affirming the revocation. The application when filed  
 149 may be refused by the Commissioner unless the applicant shows good cause why the  
 150 revocation of its license shall not be deemed a bar to the issuance of a new license.
- 151 (f) Appeal from any order or decision of the Commissioner made pursuant to this chapter  
 152 shall be taken as provided in Chapter 2 of this title.
- 153 (g)(1) The Commissioner shall have the authority to issue a probationary license to any  
 154 applicant under this title.
- 155 (2) A probationary license may be issued for a period of not less than three months and  
 156 not longer than 12 months and shall be subject to immediate revocation for cause at any  
 157 time without a hearing.
- 158 (3) The Commissioner shall prescribe the terms of probation, may extend the  
 159 probationary period, or refuse to grant a license at the end of any probationary period in  
 160 accordance with rules and regulations.
- 161 (h) A pharmacy benefits manager's license may not be sold or transferred to a nonaffiliated  
 162 or otherwise unrelated party. A pharmacy benefits manager may not contract or  
 163 subcontract any of its negotiated formulary services to any unlicensed ~~nonaffiliated~~  
 164 business entity ~~unless a special authorization is approved by the Commissioner prior to~~  
 165 ~~entering into a contracted or subcontracted arrangement.~~
- 166 (i) In addition to all other penalties provided for under this title, the Commissioner shall  
 167 have the authority to assess a monetary penalty against any person, business entity, or other  
 168 entity acting as a pharmacy benefits manager without a license of up to ~~\$1,000.00~~  
 169 \$2,000.00 for each transaction in violation of this chapter, unless such person, business  
 170 entity, or other entity knew or reasonably should have known it was in violation of this

171 chapter, in which case the monetary penalty provided for in this subsection may be  
 172 increased to an amount of up to ~~\$5,000.00~~ \$10,000.00 for each and every act in violation.

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

176 (k) In addition to all other penalties provided for under this title, the Commissioner shall  
 177 have the authority to place any pharmacy benefits manager on probation for a period of  
 178 time not to exceed one year for each and every act in violation of this chapter and ~~may~~ shall  
 179 subject such pharmacy benefits manager to a monetary penalty of up to ~~\$1,000.00~~  
 180 \$2,000.00 for each and every act in violation of this chapter, unless the pharmacy benefits  
 181 manager knew or reasonably should have known he or she was in violation of this chapter,  
 182 in which case the monetary penalty provided for in this subsection ~~may~~ shall be increased  
 183 to an amount of up to ~~\$5,000.00~~ \$10,000.00 for each and every act in violation. In the  
 184 event a pharmacy benefits manager violates any provision of this chapter while on  
 185 probation, the Commissioner shall have the authority to suspend the pharmacy benefits  
 186 manager's license. For purposes of this subsection, a violation shall be considered to have  
 187 occurred each time an act in violation of this chapter is committed.

188 ~~(l) A pharmacy benefits manager operating as a line of business or affiliate of a health~~  
 189 ~~insurer, health care center, or fraternal benefit society licensed in this state or of any~~  
 190 ~~affiliate of such health insurer, health care center, or fraternal benefit society shall not be~~  
 191 ~~required to obtain a license pursuant to this chapter. Such health insurer, health care center,~~  
 192 ~~or fraternal benefit society shall notify the Commissioner annually, in writing, on a form~~  
 193 ~~provided by the Commissioner, that it is affiliated with or operating as a line of business~~  
 194 ~~as a pharmacy benefits manager."~~

### 195 SECTION 3.

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

198 "33-64-4.

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

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

204 (1) Is licensed by the Georgia Composite Medical Board to practice medicine or is  
 205 licensed in another state and has a pending application filed with the Georgia Composite  
 206 Medical Board;

- 207 (2) Has actively seen patients within the past five years; and  
 208 (3) Has practiced in the same specialty area for which he or she is providing advisement  
 209 within the past five years."

210 **SECTION 4.**

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

214 "33-64-7.

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

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

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

243 complaint was not justified, the expenses incurred as a result of the examination or audit  
 244 shall not be assessed against the pharmacy benefits manager but shall be borne by the  
 245 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 it receives from pharmaceutical manufacturers. In addition, a pharmacy benefits manager  
 311 shall report annually to each client, including but not limited to, insurers and payors, health  
 312 plan the aggregate amount of all rebates and other payments that the pharmacy benefits  
 313 manager received from pharmaceutical manufacturers in connection with claims if  
 314 administered on behalf of the client and the aggregate amount of such rebates the pharmacy

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

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

319 ~~(d) Unless otherwise prohibited by law, a pharmacy benefits manager shall apply any~~  
 320 ~~third-party payment, financial assistance, discount, product voucher, or other reduction in~~  
 321 ~~out-of-pocket expenses made by or on behalf of an insured for a prescription drug toward~~  
 322 ~~an insured's deductible, cost share responsibility, copayment responsibility, or~~  
 323 ~~out-of-pocket maximum associated with the insured's health plan.~~

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

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

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

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

328 ~~(4) Any any licensed group model health maintenance organization with an exclusive~~  
 329 ~~medical group contract and which operates its own pharmacies which are licensed under~~  
 330 ~~Code Section ~~26-4-110.1~~ 26-4-110."~~

### 331 **SECTION 7.**

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

334 "33-64-11.

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

336 (1) Prohibiting a pharmacist, pharmacy, or other dispenser or dispenser practice from  
 337 providing an insured individual information on the amount of the insured's cost share for  
 338 such insured's prescription drug and the clinical efficacy of a more affordable alternative  
 339 drug if one is available. No pharmacist, pharmacy, or other dispenser or dispenser  
 340 practice shall be penalized by a pharmacy benefits manager for disclosing such  
 341 information to an insured or for selling to an insured a more affordable alternative if one  
 342 is available;

343 (2) Prohibiting a pharmacist, pharmacy, or other dispenser or dispenser practice from  
 344 offering and providing ~~store direct~~ delivery services to an insured as an ancillary service  
 345 of the pharmacy or dispenser practice;

346 (3) Charging or collecting from an insured a copayment that exceeds the total submitted  
 347 charges by the network pharmacy or other dispenser practice for which the pharmacy or  
 348 dispenser practice is paid;

349 (4) Charging or holding a pharmacist or pharmacy or dispenser or dispenser practice  
 350 responsible for a fee or penalty relating to the adjudication of a claim or an audit

351 conducted pursuant to Code Section 26-4-118, provided that this shall not restrict  
 352 recoupments made in accordance with Code Section 26-4-118 ~~or pay for performance~~  
 353 ~~recoupments otherwise permitted by law;~~

354 (5) Recouping funds from a pharmacy in connection with claims for which the pharmacy  
 355 has already been paid without first complying with the requirements set forth in Code  
 356 Section 26-4-118, unless such recoupment is otherwise permitted or required by law;

357 (6) Penalizing or retaliating against a pharmacist or pharmacy for exercising rights under  
 358 this chapter or Code Section 26-4-118;

359 (7) Steering. ~~Ordering an insured for the filling of a prescription or the provision of~~  
 360 ~~pharmacy care services to an affiliated pharmacy; offering or implementing plan designs~~  
 361 ~~that require patients to utilize an affiliated pharmacy; or advertising, marketing, or~~  
 362 ~~promoting a pharmacy by an affiliate to patients or prospective patients. Subject to the~~  
 363 ~~foregoing, a pharmacy benefits manager may include an affiliated pharmacy in~~  
 364 ~~communications to patients, including patient and prospective patient specific~~  
 365 ~~communications, regarding network pharmacies and prices, provided that the pharmacy~~  
 366 ~~benefits manager includes information regarding eligible nonaffiliated pharmacies in such~~  
 367 ~~communications and the information provided is accurate. This paragraph shall not be~~  
 368 ~~construed to prohibit a pharmacy benefits manager from entering into an agreement with~~  
 369 ~~an affiliated pharmacy or an affiliated pharmacy of another pharmacy benefits manager~~  
 370 ~~licensed pursuant to this chapter to provide pharmacy care to patients. The restrictions~~  
 371 ~~in this paragraph shall not apply to limited distribution prescription drugs requiring~~  
 372 ~~special handling and not commonly carried at retail pharmacies or oncology clinics or~~  
 373 ~~practices;~~

374 (8) Transferring or sharing records relative to prescription information containing  
 375 patient-identifiable and prescriber-identifiable data to an affiliated pharmacy for any  
 376 commercial purpose; provided, however, that nothing shall be construed to prohibit the  
 377 exchange of prescription information between a pharmacy benefits manager and an  
 378 affiliated pharmacy for the limited purposes of pharmacy reimbursement, formulary  
 379 compliance, pharmacy care, or utilization review;

380 (9) Knowingly making a misrepresentation to an insured, pharmacist, pharmacy,  
 381 dispenser, or dispenser practice; and

382 (10) Taking any action in violation of subparagraphs (a)(21)(D) and (a)(21)(E) of Code  
 383 Section 26-4-28 or charging a pharmacy a fee in connection with network enrollment;

384 (11) Withholding coverage or requiring prior authorization for a lower cost  
 385 therapeutically equivalent drug available to an insured or failing to reduce an insured's  
 386 cost share when an insured selects a lower cost therapeutically equivalent drug; and

387 (12) Removing a drug from a formulary or denying coverage of a drug for the purpose  
 388 of incentivizing an insured to seek coverage from a different health plan.

389 (b) To the extent that any provision of this Code section is inconsistent or conflicts with  
 390 applicable federal law, rule, or regulation, such applicable federal law, rule, or regulation  
 391 shall apply; provided, however, that a pharmacy benefits manager contracted or  
 392 subcontracted with this state, including any agency or department thereof, shall agree as  
 393 a condition to contract that it will not violate this Code section or any other provision of  
 394 this chapter or of any rules or regulations implemented pursuant to this chapter in  
 395 performing any services in this state.

396 (c) This Code section shall not apply to:

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

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

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

400 ~~(4) Any any licensed group model health maintenance organization with an exclusive~~  
 401 ~~medical group contract and which operates its own pharmacies which are licensed under~~  
 402 ~~Code Section ~~26-4-110.1~~ 26-4-110."~~

#### 403 **SECTION 8.**

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

405 "33-64-12.

406 (a) The General Assembly finds that:

407 (1) The practice of steering by a pharmacy benefits manager represents a conflict of  
 408 interest;

409 (2) The practice of imposing point-of-sale fees or retroactive fees obscures the true cost  
 410 of prescription drugs in this state;

411 (3) These practices have resulted in harm, including increasing drug prices, overcharging  
 412 insureds and payors, restricting insureds' choice of pharmacies and other dispensers,  
 413 underpaying community pharmacies and other dispensers, and fragmenting and creating  
 414 barriers to care, particularly in rural Georgia and for patients battling life-threatening  
 415 illnesses and chronic diseases; and

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

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

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

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

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

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

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

454 33-64-13.

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

457

**SECTION 9.**

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

460

**SECTION 10.**

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