

The House Special Committee on Access to Quality Health Care offers the following substitute to HB 991:

A BILL TO BE ENTITLED
AN ACT

1 To amend Title 31 of the Official Code of Georgia Annotated, relating to health, so as to
2 provide for transparency relating to state healthcare plans and its contractors; to provide for
3 a short title; to provide for definitions; to provide for an oversight committee; to provide for
4 its members and powers; to provide for information from state contractors and others to the
5 oversight committee regarding state healthcare plans; to provide for confidentiality of certain
6 records; to provide for penalties; to provide for related matters; to repeal conflicting laws;
7 and for other purposes.

8 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

9 **SECTION 1.**

10 Title 31 of the Official Code of Georgia Annotated, relating to health, is amended in
11 Chapter 2, relating to the Department of Community Health, by adding a new Code section
12 to read as follows:

13 "31-2-17.

14 (a) This Code section shall be known and may be cited as the 'Healthcare Transparency
15 and Accountability Act.'

16 (b) As used in this Code section, the term:

17 (1) 'Affiliate' means a person which, either directly or indirectly through one or more
18 intermediaries:

19 (A) Has an investment or ownership interest in a person licensed under Title 33;

20 (B) Shares common ownership with a person licensed under Title 33; or

21 (C) Has as an investor or ownership interest holder a person licensed under Title 33.

22 (2) 'Contractor' means a person licensed under Title 33 who contracts directly with the
23 Department of Community Health or another state agency to provide services pursuant
24 to a state healthcare plan.

25 (3) 'Oversight committee' means the Healthcare Transparency and Accountability
26 Oversight Committee created pursuant to this Code section.

27 (4) 'State healthcare plan' means any healthcare plan or benefits administered by or
 28 through the department or another state agency, including, but not limited to, the state
 29 health benefit plan under Article 1 of Chapter 18 of Title 45, the plan for public
 30 employees under Part 6 of Article 17 of Chapter 2 of Title 20, the medical assistance
 31 program under Article 7 of Chapter 4 of Title 49, the PeachCare for Kids Program under
 32 Article 13 of Chapter 5 of Title 49, and any other health services or benefits administered
 33 by or on behalf of the state.

34 (5) 'Subcontractor' means an affiliate or nonaffiliate entity that enters into an agreement
 35 with a contractor to administer, provide, deliver, arrange for, pay for, or reimburse any
 36 of the costs of healthcare services provided pursuant to a state healthcare plan, including
 37 but not limited to pharmacy benefits managers and dental care management
 38 organizations. The term shall not include the practice of any profession licensed under
 39 Title 26 or 43 unless it is a licensed affiliate of the contractor.

40 (c)(1) There is created the Healthcare Transparency and Accountability Oversight
 41 Committee which shall have authority to review the performance and conduct of all state
 42 healthcare plan contractors and their subcontractors.

43 (2) The oversight committee shall be composed of nine members as follows:

44 (A) One physician, one pharmacist, and one consumer member who receives benefits
 45 from a state healthcare plan, appointed by the Governor; and

46 (B) Six members of the General Assembly appointed as follows:

47 (i) Two members appointed by the Governor;

48 (ii) Two members appointed by the Lieutenant Governor; and

49 (iii) Two members appointed by the Speaker of the House of Representatives.

50 (3) Members shall serve two-year terms. The Governor shall designate one of his or her
 51 appointees from the General Assembly as the chairperson.

52 (4) The oversight committee shall have the power to:

53 (A) Request and review records relating to state healthcare plan contractors and their
 54 subcontractors, in performance of their contractual obligations, including contracts,
 55 subcontracts, reports, statements, and deidentified healthcare records;

56 (B) Utilize legislative counsel when, in the oversight committee's determination, it is
 57 needed;

58 (C) Prepare reports using aggregated data which shall not be considered confidential
 59 or a trade secret and which shall be made available to the General Assembly and the
 60 public;

61 (D) Submit written questions to applicable departments, agencies, boards, and state
 62 healthcare plan contractors and their subcontractors which shall be answered no later
 63 than 30 days following receipt of such questions;

- 64 (E) Prepare recommendations regarding contracting, transparency, and oversight to
 65 applicable state departments, agencies, and boards;
- 66 (F) Prepare recommendations on legislative initiatives to the General Assembly as well
 67 as regulatory recommendations to the Commissioner of Insurance;
- 68 (G) Retain third-party consultants, including attorneys, actuaries, accountants, and
 69 healthcare providers such as physicians, pharmacists, nurses, and dentists, and other
 70 experts as may be reasonably necessary to assist the oversight committee in its
 71 functions. Any third party retained shall be under the direction and control of the
 72 oversight committee, shall act only in an advisory capacity, and shall be subject to
 73 maintaining confidentiality; and
- 74 (H) Request an audit of a contractor or its subcontractors from the Department of
 75 Audits and Accounts.
- 76 (d)(1) A contractor and its subcontractors shall, upon request of the oversight committee
 77 or the Department of Audits and Accounts, make all books, documents, papers, provider
 78 records, healthcare records, financial records, data, surveys, and computer databases
 79 related to its services to the state within its care, custody, and control available for
 80 examination. All requested records shall be provided within 30 days following a written
 81 request in a format determined by the oversight committee or the Department of Audits
 82 and Accounts. All records shall be provided at the sole cost and expense of the contractor
 83 or subcontractor.
- 84 (2) A contractor shall annually provide to the oversight committee, no later than
 85 November 1 of each year, all reports and statements prepared pursuant to its contract with
 86 the state; financial reports filed with the Commissioner of Insurance; and an Annual
 87 Transparency Report which shall be made available to the public detailing the following
 88 as it relates to a state healthcare plan:
- 89 (A) The amount it was paid by the state, including, where applicable, capitated per
 90 member per month rates;
- 91 (B) Medical Loss Ratio and loss ratios associated with the administration of dental
 92 benefits;
- 93 (C) All contractual obligations with the state, including performance benchmarks, it
 94 failed to meet;
- 95 (D) All reports prepared pursuant to its contract with the state;
- 96 (E) All dividends paid to shareholders or affiliates;
- 97 (F) Financial reports reflecting expenses, net underwriting gain, and net profit
 98 attributable to services performed for the state;
- 99 (G) Most recent legal chart of corporate structure; and
- 100 (H) All affiliate subcontractors and the amount each affiliate subcontractor was paid.

101 (3) A contractor or its subcontractor pharmacy benefits manager shall annually provide
102 to the oversight committee, no later than November 1 of each year, an Annual
103 Prescription Drug Transparency Report which shall be made available to the public
104 detailing the following as it relates to a state healthcare plan:

105 (A) The aggregated rebates, fees, price protection payments, and any other payments
106 collected from pharmaceutical manufacturers by the contractor or its subcontractor
107 pharmacy benefits manager and the amount retained as revenue by the contractor, the
108 amount retained as revenue by its subcontractor pharmacy benefits manager, the
109 amount passed back to the state healthcare plan, and the amount passed to insureds at
110 the point of sale;

111 (B) The aggregate total number of pharmacy claims, the aggregate amount paid to
112 pharmacies for cost of drug reimbursement, the aggregate amount paid to pharmacies
113 for dispensing fees, the aggregate amount paid to pharmacies by the state healthcare
114 plan, and the aggregate amount paid to pharmacies by insureds via copayments;

115 (C) Any difference between the aggregate amount a state healthcare plan paid a
116 contractor for pharmacy claims and what the pharmacies were paid and any difference
117 between what a contractor paid for pharmacy claims and what the pharmacies were
118 paid;

119 (D) The aggregate amount paid to affiliate pharmacies of a contractor or affiliate
120 pharmacies of its subcontractor pharmacy benefits manager;

121 (E) A list of all pharmacy claims by a pharmacy for dispensed drug products appearing
122 on the department's Select Specialty Pharmacy Rate Pricing List, including the unit
123 price and the dispensing fee;

124 (F) The aggregate number of prior authorizations required, the aggregate costs
125 associated with processing the prior authorizations, the aggregate number of days it
126 took the pharmacy benefits manager to render a decision on prior authorizations once
127 the completed prior authorization has been submitted, and the aggregate number of
128 prior authorizations that were approved and that were denied;

129 (G) The names of the 25 prescription drugs which were subject to the most prior
130 authorizations; and

131 (H) The names of the 50 most frequently prescribed prescription drugs.

132 (e)(1) The amount that a contractor is paid by the state and the amount that a
133 subcontractor is paid by a contractor, including capitated per member, per month rates,
134 shall be subject to disclosure under Chapter 18 of Title 50, relating to open records, and
135 shall not be confidential or constitute a trade secret.

136 (2) Records, reports, documents, and data submitted to the oversight committee not
137 otherwise subject to disclosure under Chapter 18 of Title 50 shall be treated as

138 confidential and shall not be subject to disclosure by the oversight committee or its
139 members; provided, however, that the annual transparency report, annual prescription
140 drug transparency report, and any reports prepared by the oversight committee shall be
141 subject to disclosure under Chapter 18 of Title 50 and shall not be confidential or
142 constitute a trade secret.

143 (f) The Insurance Commissioner shall have the authority to subject any contractor or its
144 subcontracted pharmacy benefits manager to a monetary penalty of up to \$2,000.00 for
145 each and every act in violation of this Code section, unless the contractor or subcontractor
146 knew or reasonably should have known that it was in violation of this Code section, in
147 which case the monetary penalty provided for in this subsection may be increased to an
148 amount of up to \$5,000.00 for each and every act in violation of this Code section."

149 **SECTION 2.**

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